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Kelly's Federal Prohibition Digest

Including Such Citations as May be Useful in the Trial
of Cases Arising Under the National
Prohibition Act.

Also Forms

By
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OF THE PEORIA BAR
PEORIA, ILLINOIS



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PREFACE.

It is to be hoped that this work will meet an existing demand for a digest on Prohibition Laws. An effort has been made to include all cases arising under the Act, supplemented by such additional citations as may be of use in actual trial work.

The author has constantly kept in mind that one of the purposes to be served by this book is: that it may afford ready and quick reference to the law on its particular subject. Not only in the office but in the court room. Consequently he has tried to make it as compact as possible consistent with thoroughness of treatment.

This book is intended as an adjunct to the many excellent works on Federal Law. It is to be used with these works and in no sense is meant to replace them.

In presenting this digest to the profession the author feels fully the need for indulgence. However, he has faith in the magnanimity of his brother members of the bar.

BERNARD KELLY.

Peoria, Ill., November 24, 1922.

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ACCOMPLICES.

1. Concealing Knowledge of Crime:—

A person does not become an accomplice by reason of the fact that he fails to disclose until sometime after, that a crime was committed.

Bird v. United States, 187 U. S., 118.

2. Definition:—

One persuading another to commit a crime is an accomplice.

Ackley v. United States, 200 Fed., 217.

An accomplice is an associate in guilt in the commission of a crime, a participant in the offense as an accessory or principle.

Singer v. United States, 278 Fed., 415.

3. Entrapment by Officers:—

Agents wrote letters to a party under suspicion of violating postal laws with intention of using correspondence as a decoy. Agents are not accomplices.

Shepard v. United States, 160 Fed., 584.

4. Purchase of Liquor:—

A purchaser of intoxicating liquor is not an accomplice under the Act.

Singer v. United States, 278 Fed., 415.

5. Rule on Uncorroborated Testimony:—

The federal courts recognize no rule of law forbidding conviction on the testimony of an accomplice alone if such testimony is believed by the jury. However, it is better practice for the court to instruct the jury to be cautious in accepting such testimony unless corroborated.

Wagman v. United States, 269 Fed., 568;

Holmgren v. United States, 217 U. S., 509-523-24;

Caminetti v. United States, 242 U. S., 470-495;

Ray v. United States, 265 Fed., 257;

United States v. Richards, 149 Fed., 443.

6. The Rule as to Corroboration:—

For rule as to corroboration and extent of credence to be given testimony of accomplices, see:

Knoell v. United States, 239 Fed., 16;
United States v. Fischer, 245 Fed., 477;
Patterson v. United States, 246 Fed., 833;
Bosselman v. United States, 239 Fed., 82.

In a case where government relied upon uncorroborated testimony of a witness and he contradicted himself several times on the stand and gave other evidences of the unsatisfactory nature of his testimony, court was warranted in taking case from the jury.

United States v. Murphy, 253 Fed., 404.

7. Uncorroborated:—

An accomplice need not be corroborated.

Harrington v. United States, 267 Fed., 97;
Freed v. United States, 266 Fed., 1012;
Rosen v. United States, 271 Fed., 651;
Ahern v. United States, 158 Fed., 606;
Richardson v. United States, 181 Fed., 1.

8. When an Accomplice May Testify:—

Where two persons were jointly indicted and tried, one of them may at his own request be examined by the government.

Wolfson v. United States, 101 Fed., 430.

9. When Considered as Principal:—

Where two or more parties join in an unlawful undertaking or enterprise there is no master and no servant, but each is liable as principal in a criminal action to punishment for violation of the law. It does not matter whose hand gave out the whiskey or who served it. It was a common undertaking.

Heitler v. United States, 280 Fed., 703;
Hitchman Coal and Coke Co. v. Mitchell, 245 U. S., 229.

ADMISSIONS.**10. Admissions as Sufficient Proof:—**

In a prosecution for maintaining a nuisance under the National Prohibition Act of October 28th, 1919, it was

held that an admission by the defendant that he was owner and proprietor of the place was sufficient proof of such fact.

Wiggins v. United States, 272 Fed., 41.

11. Admissions by Attorney:—

Statements made by attorney in course of an argument are not admissible against client in another suit.

Miller v. United States, 133 Fed., 337.

12. Admissions While Under Arrest:—

Accused after being arrested and being warned as to the effect of any statements he might make afterwards made admissions which were written down in shorthand and signed. Held admissible.

Bak Kun v. United States, 195 Fed., 53.

13. Against Interest:—

Defendant made statements he could implicate another in the offense. Held admissible as a statement against interest.

Adamson v. United States, 184 Fed., 714.

14. Confession as Distinguished from Admission:—

Statements not subject to rules governing admission of confession.

Dimmick v. United States, 116 Fed., 825.

15. Silence as an Admission:—

Fact that party did not reply to charges made in a letter does not make fact or letter admissible.

Packer v. United States, 106 Fed., 906.

16. Statements Made to Magistrate:—

Statements made by the accused do not become inadmissible although made to magistrate who afterwards held the preliminary hearing.

Hardy v. United States, 186 U. S., 224.

ARGUMENT.

17. Appeal to Prejudice:—

Court has right to stop counsel who is appealing to race feeling in his argument.

United States v. Battle, 209 U. S., 36.

Language used for purpose of creating prejudice is improper.

Johnston v. United States, 154 Fed., 445.

18. Comment on Appearance:—

If attorney for accused comments on appearance of the defendants prosecuting attorney has right also to comment on his appearance in retaliation.

United States v. German, 115 Fed., 987.

19. Comment on Failure of Accused to Testify:—

Attorney for the government said in course of his argument "why didn't the defendant put a witness on the stand," held not be objectionable because of the fact the defendant had not testified.

Jackson v. United States, 102 Fed. 473.

20. General Rule:—

As a rule improper remarks are not sufficient to reverse a cause if court has stopped the remarks and admonished the jury to disregard them in their deliberations.

Ammermon v. United States, 185 Fed., 1.

21. Improper but Not Prejudicial:—

Defendants were referred to as "Billingsley Gang." The court said while the term was rather a harsh one and ought not to be used by counsel for the government, yet inasmuch as it appeared from the evidence that the defendants were organized for unlawful purposes it was not prejudicial error.

Billingsley v. United States, 274 Fed., 86.

22. Limitation of Argument:—

The court has the right to limit argument within the bounds of a reasonable discretion.

Wagmon v. United States, 269 Fed., 569.

23. Misquoting the Evidence:—

Where a prosecuting attorney in his argument stated "that when defendant was arrested for having liquor in his possession" and there had been no testimony that the defendant did have liquor in his possession under these circumstances the court should have stopped the prosecuting attorney and instructed the jury not to consider such remarks in arriving at their verdict.

Hunter v. United States, 264 Fed., 831.

The prosecuting attorney should be careful not to travel outside the testimony when presenting the case to the jury. However, an appellate court will not reverse the case on this ground alone unless it is reasonably apparent that the defendant suffered damage or was prejudiced by such remark.

Hunter v. United States, 264 Fed., 831.

24. Scope of Argument:—

Fairly wide scope is given attorneys for both government and defense and the reviewing court will not take cognizance of court's refusal to instruct jury as to remarks of counsel where there has been a clear abuse of the freedom generally permitted in arguments.

Chadwick v. United States, 141 Fed., 225.

ARREST.

25. After Arrest:—

Immediately after arrest prisoner should be taken before magistrate.

Von Arx v. Shafer, 241 Fed., 649.

26. Arrest of United States Officer:—

If United States marshal acts by authority of United States court he is immune from arrest by state authorities

Anderson v. Elliott, 101 Fed., 609.

27. Arrest Without Warrant:—

For authority to arrest without a warrant for violation of the revenue laws, viz., operating illicit distillery, etc., see Act of May 28th, 1896.

It was the established rule at common law that arrest for misdemeanor could not be made without warrant.

John Bad Elk v. United States, 177 U. S., 529;

Kurtz v. Moffit, 115 U. S., 487;

Pritchett v. Sullivan, 182 Fed., 480.

28. Attempt to Conceal Crime:—

Person trying to conceal evidence of crime subject to immediate arrest without warrant.

United States v. Fuellhort, 106 Fed., 911.

29. Exhibiting Warrant:—

Officer need not exhibit warrant if he has it in his possession.

O'Halloran v. McGuireck, 167 Fed., 493.

30. Liquor on Person:—

Person with liquor on his person may be arrested without warrant and liquor found used as evidence.

United States v. Snyder, 278 Fed., 650.

31. Under Arrest by State Authorities:—

Where person is under arrest of state authorities Federal court will not interfere unless it is to save accused some right or privilege under the Federal Constitution.

Ex Parte Rogers, 138 Fed., 961.

32. Violation of Law in Presence of Officer:—

Warrant held not necessary in South Carolina where violation of liquor law was in the presence of an officer and he the officer made the arrest.

Elrod v. Moss, 278 Fed., 123;

Chandler v. Rutherford, 101 Fed., 775.

Under the Federal as well as state statutes to justify search and seizure or arrest without warrant the officer must have personal and direct knowledge through his hearing, sight or other senses of the commission of the crime by the accused.

Elrod v. Moss, 278 Fed., 123.

33. When Felony Has Been Committed:—

Arrest warranted when there is reasonable grounds to believe that a felony has been committed.

Prickett v. Sullivan, 184 Fed., 480.

BAIL.**34. Bail After Conviction:—**

Circuit Court of Appeals may admit prisoner to bail pending assignment of error.

McKnight v. United States, 113 Fed., 451.

Prisoner may be admitted to bail after conviction pending motion for rehearing.

Walsh v. United States, 174 Fed., 621.

This rule does not apply when judgment is final.

Walsh v. United States, 174 Fed., 621.

For rule as to bail after conviction, see:

United States v. John, 254 Fed., 794;

United States v. Murphy, 261 Fed., 751.

35. Definition:—

For definition of Bail, see:

United States v. Case 8, Blatchf., 250;

Federal Case No. 14, 742.

36. Excessive Bail:—

“Excessive bail shall not be required.”

Eighth Amendment to Federal Constitution.

37. Petition for Writ Dismissed:—

Prisoner defeats right if he gives excessive bail before petition for writ of habeas corpus has been heard.

Johnson v. Hay, 227 U. S., 445.

38. Previous Arrest as Cause for Denial:—

Defendant had been convicted several times on same indictment. Held as not being sufficient reason for denial of bail.

McKnight v. United States, 113 Fed., 451.

39. Remedy for Excessive Bail:—

If bail is excessive remedy is in habeas corpus.

United States v. Brawner, 7 Fed., 86.

40. Right to Bail:—

For a rule as to right of prisoner to be admitted to bail, see:

United States v. Rice, 192 Fed., 720.

41. Signing of Bail, Recognizance:—

Recognizance need not be signed.

United States v. Adams Express Co., 229 U. S., 381.

Bail must be signed.

United States v. Adams Express Co., 229 U. S., 381.

42. Surety May Arrest:—

Surety is jailer of principal in bail bond and may make arrest if occasion requires.

Ewing v. United States, 240 Fed., 241.

43. Who May Take:—

When clerk or deputy may take acknowledgement and justification of parties to bail bond.

United States v. Enaus, 2 Fed., 147.

BAR TO CONVICTION.**44. Bar in Case of Conspiracy:—**

Time of limitation commences to run in case of conspiracy from time (first) act is committed.

United States v. Bradford, 148 Fed., 413.

45. Fugitive from Justice:—

One fleeing from justice not entitled to benefit of statute of limitation and fact that he left state without intention of escaping arrest is immaterial.

In Re Bruse, 132 Fed. 390.

46. General Statute of Limitation:—

Three year statute of limitations as regards crimes was not repealed by the Pure Food and Drug Act.

United States v. J. L. Hopkins & Co., 199 Fed., 649.

47. Repeal of Statute a Bar:—

A repeal of statute before a conviction is a bar to further proceedings.

Maresca v. United States, 277 Fed., 727.

48. Two Cases at Same Time:—

When two suits of like nature for the same purpose and between the same parties are pending at the same time defendants in the second suit may plead the pendency of the first suit as a plea in abatement, but when the first suit has proceeded to judgment it is no longer simply a matter in abatement but a bar, a complete defense to the prosecution of the second suit.

McGovern et. al. v. United States, 280 Fed., 73.

49. Prosecution in State Court as a Bar:—

Proceedings in a state court are not a bar to subsequent prosecutions in the Federal court for same transactions.

United States v. Holt, 270 Fed., 639;

United States v. Bostown, 273 Fed., 535;

United States v. Regan, 273 Fed., 727;

Contra see:

United States v. Peterson et. al., 268 Fed., 864.

50. Prosecution Under Act as Effecting Revenue Laws:—

A conviction under the act for manufacturing liquor without a permit does not bar prosecution for violation of

revenue laws. Sections 3258-3260-3279.

United States v. Sacein Rosohana, Farhat, 269 Fed., 33.

BILL OF EXCEPTIONS.

51. After Term Has Expired:—

Court has no authority to extend time for filing bill of exceptions after term has expired.

Maresca et. al. v. United States, 277 Fed., 727.

Unless there is agreement or time fixed for filing.

United States v. Thibodeaux, 232 Fed., 91.

Bill must be filed by end of term even if last day of term falls on Sunday or holiday.

Maresca et. al. v. United States, 277 Fed., 727.

52. Computation:—

Where an act is required to be done in a certain number of days after or before a fixed time, Sunday is to be included in computing number of days when it exceeds seven; if it is less than seven days Sunday must be excluded and the same rule applies where holidays intervene.

Maresca et. al. v. United States, 277 Fed., 727.

(See page 734 for brief.)

53. Extension of Time to File:—

Authority of court to make extension.

Camden Iron Works v. Sater, 223 Fed., 611.

54. Mandamus:—

On mandamus of court to sign bill.

Camden Iron Works v. Sater, 223 Fed., 611.

55. Need for Bill:—

Circuit Court of Appeals has no way of determining evidence without bill of exceptions.

Maresca et. al. v. United States, 277 Fed., 727.

56. Objectionable Matter Must be Complete:—

When complaint is made in bill of exceptions as to remarks of judge remarks must be given in full.

Garst v. United States, 180 Fed., 339.

57. Presumption:—

If no bill of exceptions is on file it is presumed by the court that evidence was sufficient.

Maresca et. al. v. United States, 277 Fed., 727.

58. Recital:—

A recital in a bill adds nothing to the evidence contained therein.

Baultbee v. International Paper Co., 229 Fed., 951.

59. Right to Bill is Statutory:—

Right to bill of exceptions in a criminal case is statutory.

Maresca et. al. v. United States, 277 Fed., 727.

60. Settlement of Bill:—

Bill of exceptions does not necessarily have to be settled before filing of the writ and assignment of errors.

Old Nick Williams Co. v. United States, 132 Fed., 925.

61. Sufficient to Constitute Bill:—

An informal paper held sufficient to constitute bill of exceptions.

Long v. Atlantic Coast Line R. Co., 238 Fed., 919.

62. Written and Printed Exhibits:—

It is improper to describe written exhibits in the bill, they should be set out in full.

Balliet v. United States, 129 Fed., 689.

BILL OF PARTICULARS.**63. Entitled to Bill:—**

Defendant held entitled to bill of particulars.

Kirby v. United States, 174 U. S., 47.

64. Faulty Averment Not Cured by Bill:—

If an indictment fails to make a material averment it will not be cured by a bill of particulars.

United States v. Bayand, 16 Fed., 376.

65. Not Entitled to Bill of Particulars:—

Defendant requested bill of particulars at his second trial, it appearing in the first trial the prosecution had presented fully the facts involved in the case. It was held defendant was not entitled to the bill of particulars under the circumstances.

Ciafrdini v. United States, 266 Fed., 471.

BOOKS.**66. Court Can Impound:—**

Although books and papers have been illegally seized by officers of the government and the property of a third person, the federal court has the right and authority to impound them when they are essential as part of the proof in a criminal case.

United States v. McHie, 196 Fed., 586.

67. Fictitious Names Used in Account Books:—

A book account is admissible in evidence although entries were carried in fictitious names if it can be shown that purchases of whiskey, etc., were made under the fictitious names used in such accounts.

Billingsley v. United States, 274 Fed., 86.

68. Not Necessary to Identify Each Item:—

It is not necessary to identify each item in a book account to make such book account admissible in evidence.

Billingsley v. United States, 274 Fed., 86.

Books held admissible although defendant did not keep them.

Parker v. United States, 203 Fed., 950.

69. Official Records:—

Defendant was charged with carrying on business of wholesale liquor dealer without paying tax. He claimed he was agent for brother. Exclusion of printed official record showing operation of the distillery held improper.

Day v. United States, 220 Fed., 818.

70. Technical Books:—

Technical books held admissible.

United States v. Two Cases of Chloro-Naphtholeum,
217 Fed. 477.

CHARACTER.**71. Evidence of Good Character:—**

Evidence of good character is always competent in a criminal case and when it is established becomes a fact for the jury to consider with all other facts established in

arriving at a determination as to the guilt or innocence of the accused.

Searway v. United States, 184 Fed., 716;

Breese v. United States, 143 Fed., 250.

72. Good Character as Raising Reasonable Doubt:—

The court did not err in refusing to instruct that good character was sufficient in itself to raise question of reasonable doubt.

Singer v. United States, 278 Fed., 415.

Good character as raising reasonable doubt.

King v. United States, 112 Fed., 988;

Smitkin v. United States, 265 Fed., 489;

Rosen v. United States, 271 Fed., 651.

73. Morality and Sobriety:—

Morality and sobriety held irrelevant.

Harper v. United States, 170 Fed., 385.

74. Presumption:—

There is no presumption of good character which can be considered by the jury if no evidence at all is offered as to the defendant's character.

Price v. United States, 218 Fed., 149.

CHARGE OF THE COURT.

75. Assumption of Fact Warranted:—

Assumption of fact warranted if such fact was admitted by the defendant.

May v. United States, 157 Fed., 1.

76. Bill of Exceptions Must Contain Court's Ruling:—

Where it is contended that the court erred in refusing an instruction the bill of exceptions must contain the court's refusal if the appellate court is to pass upon the question.

Feigen v. United States, 279 Fed., 107.

77. Comment on Evidence:—

A judge of a Federal court has the right to comment on the evidence in delivering his charge to the jury. However, his statements should be such as will not interfere with the free exercise of the independent judgment of the jurors.

Rudd v. United States, 173 Fed., 912.

78. Comment on Character:—

If there is no evidence as to general character or reputation of defendant, court will not be permitted to comment unfavorably on defendant's character.

Mueller v. United States, 106 Fed., 892.

79. Error to Assume Fact:—

It is error for the court in giving his charge to assume the existence of a fact.

Dolan v. United States, 123 Fed., 52.

80. Expression of Opinion on Evidence:—

Great caution should be used by the court in expressing an opinion on the evidence.

Garst v. United States, 180 Fed., 339;

Foster v. United States, 188 Fed., 305.

81. Giving Opinion as to Guilt of Accused:—

In the course of his charge the district judge used the following language: "Now you have heard the case. The court's opinion is that the defendant is guilty of the crime charged. In a federal court the court may inform the jury what his opinion is of the guilt or innocence of the defendant, but I want you to understand the question of his guilt or innocence is solely for the jury to decide, it is not for the court. The court has no part in deciding the guilt or innocence of the defendant, but the court may if it seems desirable inform the jury of his opinion. Now, gentlemen, you will take this case. You have a duty, a public duty to perform, to decide this case upon your wants and your responsibilities, to decide on your conscience, to decide whether or not this man had whiskey unlawfully in his possession." The court held this was not error.

Dillon v. United States, 279 Fed., 639;

Soblowski v. United States, 271 Fed., 294;

Johnson v. United States, 270 Fed., 168;

Oppenheim v. United States, 241 Fed., 625;

Hart v. United States, 84 Fed., 799;

Menefee v. United States, 236 Fed., 826.

Contra:

Cummings v. United States, 232 Fed., 844;

Bruse v. United States, 108 Fed., 804;

Rudd v. United States, 173 Fed., 912;

Sandals v. United States, 213 Fed., 569.

For United States Supreme Court decisions see:

Horning v. District of Columbia, 254 U. S., 135;
 Allies v. United States, 157 U. S., 117;
 Hyde v. United States, 225 U. S., 347;
 Anderson v. United States, 170 U. S., 481.

These latter cases support the court in its right to express an opinion.

82. Time for Objections:—

Objections to a charge of the court must be made at the time of trial.

Cabiale et. al. v. United States, 276 Fed., 769.

CONFISCATION.

83. Confiscation Not Implied:—

Confiscation will not be implied or raised by inference in the construction of provisions of law which have ample field for other operations in effecting a purpose clearly indicated and declared.

Street v. Lincoln Safe Deposit Co., 254 U. S., 88. (41 S. Ct. 31.)

84. Liquor Owned Before Enactment:—

The first section of the eighteenth amendment does not indicate any purpose to confiscate liquor lawfully owned at the time the amendment became effective and which the owner intended to use in a lawful manner.

Street vs. Lincoln Safe Deposit Co., 254 U. S. 88. (41 S. Ct. 31.)

CONFLICT OF LAWS.

85. City Ordinances:—

Provisions of a city ordinance permitting the use of intoxicating liquor for non-beverage purposes, although invalid because of being in conflict with the National Prohibition Act, does not prevent prosecution under the ordinance for illegal sale of liquor.

Ex parte Crookshank, 269 Fed., 980;
 Woods v. City of Seattle, 270 Fed., 315.

86. Conflict with Federal Act:—

A state can pass laws to enforce prohibition when they do not come in conflict with federal legislation.

Ex parte Ramsey et al., 265 Fed., 950;
 Ex parte Finegan, 270 Fed., 665.

87. Difference in Penalties:—

The fact that there is a difference in punishments in the state law from that of the federal law does not constitute conflict.

Ex parte Ramsey et al., 265 Fed., 950.

The fact that state legislation carries a more rigorous penalty does not invalidate the statute.

Ex parte Crookshank, 269 Fed., 980.

88. Federal Act as Affects State Laws:—

The power conferred on the federal government by the adoption of the eighteenth amendment to prohibit liquor traffic did not affect the existing power of the states to prohibit traffic in intoxicating liquors.

Ex parte Crookshank, 269 Fed., 980.

89. Federal Amendment Takes Supersedence:—

Laws enacted by congress pursuant to authority granted under the eighteenth amendment of the constitution take supersedence of inconsistent state legislation.

Ex parte Crookshank, 269 Fed., 980.

Federal amendment takes supersedence over prior state statutes.

Ex parte Ramsey et al., 265 Fed., 950.

90. Powers Delegated City:—

Same power delegated to the city within the state.

Ex parte Crookshank, 269 Fed., 980.

91. Powers of State:—

A state has the right and authority to prohibit acts not prohibited under the National Prohibition Act.

Woods v. City of Seattle, 270 Fed., 315.

92. Prosecution in Federal and State Courts:—

Both the federal and state court may act against the same person for the same acts. Thus the conviction of a defendant in the state court can not prevent his prosecution in the federal court.

United States v. Holt, 270 Fed., 639;

Gilbert v. Minnesota, 254 U. S., 325;

Halter v. Nebraska, 205 U. S., 34.

93. Punishment Under State Law:—

Possession of liquor being a violation of a state law as well as the federal law, the possessor may be punished as provided in the state statute.

Ex parte Ramsey et al., 265 Fed., 950.

94. State Law Not in Conflict:—

The fact that a state law was in existence when the eighteenth amendment was adopted does not affect it where there is nothing contained in the law which conflicts with the federal enactment. It is merely an additional instrument which the state supplies in the effort to make prohibition effective.

Vigliotti v. Commonwealth of Pennsylvania (42 S. Ct., 330);

National Prohibition Cases, 253 U. S., 350.

A state law prohibiting the sale of spirituous and intoxicating liquors without reference to their alcoholic contents without a license having first been obtained, but not requiring the issuance of a license or making the sales under the law valid was held as not to be in conflict with either constitutional amendment eighteen or the National Prohibition Act.

Vigliotti v. Commonwealth of Pennsylvania (42 S. Ct., 330).

95. State Law Valid if Consistent:—

A state law is valid and is not interfered with by the eighteenth amendment unless it is repugnant to or inconsistent with the provision of the federal act.

Ex parte Crookshank, 269 Fed., 980.

Legislation which tends to defeat prohibition is unconstitutional.

Ex parte Crookshank, 269 Fed., 980.

CONSPIRACY.**96. Act of One Act of Both:—**

The act of one is the act of both if done in pursuance of conspiracy.

Tacon v. United States, 270 Fed., 88.

97. Definition:—

A conspiracy is a combination between two or more persons to do a criminal or unlawful act or a lawful act by criminal or unlawful means.

Lawlor v. Loeme, 209 Fed., 721; affirmed, 235 U. S., 522;

Mitchell v. Hitchman Coal & Coke Co., 214 Fed., 685.

Conspiracy as defined by revised statute 5440 distinguished from common law offenses.

Ryan v. United States, 216 Fed., 13.

98. Indictment for Conspiracy to Violate War Time Act Held Good:—

Where an indictment charges conspiracy to use and sell distilled spirits for beverage purposes and the defendants did make sales between July 1st, 1919, and November 15th, 1919, it was held to charge an offense under the war act.

Maresca et al. v. United States, 277 Fed., 727.

Indictment held sufficient.

Violette et al. v. United States, 278 Fed., 163.

99. Indictment Held Insufficient:—

In a charge of conspiracy the indictment in the first count charged that at the time and place stated the defendant and two others did "unlawfully and knowingly combine, conspire, confederate and agree to commit an offense against the United States; that is to say, to violate Title II of the National Prohibition Act in this, to-wit: that the said "persons, naming them" did then and there possess certain intoxicating liquors, to-wit, about two hundred cases of intoxicating liquor contrary to the provisions of said act." The second count charged that the same persons at the same time and place "unlawfully and knowingly did possess certain intoxicating liquors, to-wit, about two hundred cases of Cuban cognac. Held insufficient, as neither count charged any offense under the laws of United States, as said counts do not set forth how and in what manner the alleged possession of intoxicating liquor was unlawful nor do either of the counts mention any state of

facts showing that the alleged possession was accompanied by such a purpose or intent or was under such circumstances as to render it a violation of the law.

Hilt et al. v. United States, 279 Fed., 421.

100. Merger of Offenses:—

A misdemeanor which is the object of a conspiracy is not merged in the latter offense which is also a misdemeanor nor is the offense of conspiracy merged in the consummated misdemeanor.

Berkowitz v. United States, 93 Fed., 452;

Steigman v. United States, 220 Fed., 63.

Where defendants were charged with conspiracy to commit a felony it was held that the merger of the conspiracy in the completed felony was an affirmative defense, and that it was not necessary for the indictment to negative the commission of the completed felony.

United States v. Sherlin, 212 Fed., 343.

101. Object of the Conspiracy:—

Indictment must contain allegation that act was done "to effect the object of the conspiracy." It is not sufficient to say act was done pursuant to said unlawful conspiracy.

United States v. Dowling, 278 Fed., 630.

102. Overt Act:—

Proof of one overt act is sufficient under the indictment.

Tacon v. United States, 270 Fed., 88.

It is not error to admit evidence of other overt acts than those specifically mentioned in the indictment.

Houston v. United States, 217 Fed., 852.

CONSTITUTIONAL.

103. Act Extends to Territorial Limits:—

Constitutional amendment 18, section 1, is operative through the entire territorial limits of the United States and binds all legislative bodies, courts, public officers and individuals within these limits and of its own force, invalidates every legislative act whether by

congress, by a state legislature or territorial assembly which authorizes or sanctions what that section forbids.

State of Rhode Island v. Palmer, 253 U. S., 350 (40 S. Ct., 486).

104. Concurrent Power:—

The second section of the eighteenth amendment, the one declaring "the congress and several states shall have concurrent power to enforce this article by appropriate legislature," does not enable congress or the several states to defeat or thwart the prohibition, but only to enforce it by appropriate means.

State of Rhode Island v. Palmer, 253 U. S., 350 (40 S. Ct., 486).

The words concurrent power used in the second section do not mean joint power or require that legislation thereunder by congress to be effective is being approved or sanctioned by the several states or any of them.

State of Rhode Island v. Palmer, 253 U. S., 350 (40 S. Ct., 486).

105. Constitutionality:—

The constitutionality of an act of congress is a question for the court.

Griesebieck Bros. Brewery Co. v. Moore, 262 Fed., 582.

The Volstead Act is constitutional.

National Prohibition Cases, 253 U. S., 350.

If it is not clearly apparent that a law is unconstitutional it should be upheld.

Piel Bros. v. Day, 278 Fed., 225;

United States v. United Shoe Machinery Co., 234 Fed., 127.

War Time Act is constitutional.

Rose v. United States, 274 Fed., 245;

Ruppert v. Caffey, 251 U. S., 264;

Hamilton v. Distilleries Co., 251 U. S., 146.

The National Prohibition Act is not unconstitutional because section 3 of Title II provides that no person shall possess any intoxicating liquor after the eighteenth amendment goes into effect, except as authorized and permitted by the act, although such intoxicating liquors were lawfully acquired prior to that time.

Rose v. United States, 274 Fed., 245.

If unconstitutional section can be disregarded, balance of act is not affected by unconstitutionality of part.

Rose v. United States, 274 Fed., 245;

See, also, National Prohibition Cases, 253 U. S., 350.

106. Due Process of Law:—

There is no abrogation of due process of law by the eighteenth amendment of the constitution.

United States v. Crossen, 264 Fed., 459.

To enforce collection of invalid tax is to take property without due process of law.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

A statute making location of a still or distilling apparatus on premises prima facie evidence of notice on the part of the person in possession of the premises does not deny due process of law or is it unconstitutional.

Hawes v. State of Georgia (42 S. Ct., 204).

The abatement of a nuisance under the National Prohibition Act does not constitute the taking of property without due process of law.

Lewinsohn v. United States, 278 Fed., 421.

107. Eighteenth Amendment Not in Conflict with Fifth:—

Eighteenth amendment is not in conflict with power to amend as given in article five of the constitution.

Christian Feigenspan Inc. v. Bodine, 264 Fed., 189.

108. Equal Protection of the Law:—

There is no deprivation of equal protection of the law merely because those who own and store liquor in other states do not have to pay a tax, the fourteenth amendment does not insure that state laws of taxation shall be the same.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

(See Opinion, page 430.)

109. Intoxicating Liquor:—

In defining "liquor" and "intoxicating liquor" the National Prohibition Act, Title II, provides that the definition of such liquor or intoxicating liquor shall not extend to dealcoholized wine or other liquids or beverages containing less than one-half of one per centum

of alcohol by volume if made as described in section thirty-seven of the act and is not known as beer, ale or porter. Consequently a beverage within the provisions of this act cannot be brought within it by any regulations issued by the commissioner of internal revenue.

Oertel Co. v. Gregory, District Attorney, et al., 270 Fed., 789.

The definition of "intoxicating liquor" as including all liquors, liquids or compounds containing one-half of one per centum or more of alcohol by volume is not such a definition as may be declared arbitrary and void.

Christian Feigenspan Inc. v. Bodine, 264 Fed., 189.

110. Jeopardy:—

Double jeopardy provision of the constitution is not violated by the section of the National Prohibition Act which provides punishment for a violation of an injunction thereunder.

Lewinsohn v. United States, 278 Fed., 421.

111. Legislature:—

Article five of the constitution provides that a proposed amendment shall be valid "when ratified by the legislature of three-fourths of the several states." The word legislature has reference to the then recognized law making body of the state and the validity of an amendment ratified by three-fourths of the several states cannot be effected by state laws which permit or provide for a referendum vote on the acts of its legislature.

Christian Feigenspan Inc. v. Bodine, 264 Fed., 189.

112. Limitation:—

A constitutional amendment is not invalid because it places a limitation on individual action which cannot be changed by the will of the majority.

Christian Feigenspan Inc. v. Bodine, 264 Fed., 189.

113. Motive:—

The court in determining the validity of the law does not attempt to inquire into the motive of the law making body nor in the wisdom of the legislature.

Hamilton v. Kentucky Distilleries and Warehouse Co., 251 U. S., 146 (40 S. Ct., 106).

114. Necessity:—

It is not necessary that a resolution proposing an amendment should expressly declare that there is a necessity.
Christian Feigenspan Inc. v. Bodine, 264 Fed., 189.

115. No Division of Power Between Congress and States:—

Constitutional amendment eighteen, section two, does not divide the power to enforce such amendment between congress and the states along lines which separate or distinguish foreign and interstate commerce from intrastate, but confides to congress power territorially coextensive with the prohibition of the first section of the eighteenth amendment and embracing manufacture and other intrastate transactions as well as importation, exportation and interstate traffic. The power of congress as conferred by constitutional amendment eighteen, section two, is not dependent on the action of any state or states.

State of Rhode Island v. Palmer, 253 U. S., 350 (40 S. Ct., 486).

116. One Act Violation of Two Statutes:—

There is no constitutional objection in making one act or one transaction a violation of two statutes, although both emanate from the same sovereignty, if each offense embraces an element not embraced in the other.

United States v. Turner, 266 Fed., 248;

Carter v. McClaughry, 183 U. S., 365;

Gavleres v. United States, 220 U. S., 338;

Ebeling v. Morgan, 237 U. S., 625.

117. Police Powers:—

The fact that an amendment to the constitution takes away police powers previously resting in a state does not make the amendment invalid.

Christian Feigenspan Inc. v. Bodine, 264 Fed., 189;

United States v. Cohen, 268 Fed., 421.

The constitution did not confer police power upon congress, but it is none the less true that when the United States exerts any of the powers conferred upon it by the constitution no valid objection can be passed upon the fact that such exercise may be attended by the same incidents which attend the exercise by a state of its

police power or that it may tend to accomplish a similar purpose.

Hamilton v. Kentucky Distilleries and Warehouse Co.,
251 U. S., 146 (40 S. Ct., 106);

Lottery Case, 188 U. S., 321;

McCray v. United States, 195 U. S., 27 (24 S. Ct., 769).

The same rule applies as to the war powers of the United States as apply to police powers, other powers, etc., all are subject to constitutional limitation.

Hamilton v. Kentucky Distilleries and Warehouse Co.,
251 U. S., 146 (40 S. Ct., 106).

118. Power of Congress:—

It is within the power of congress to prohibit the disposition of liquor manufactured for beverage purposes before the eighteenth amendment became effective.

State of Rhode Island v. Palmer, 253 U. S., 350 (40 S. Ct., 486).

The National Prohibition Act is within the power of congress.

State of Rhode Island v. Palmer, 253 U. S., 350 (40 S. Ct., 486).

119. Power of Court:—

It is not the duty of the court to substitute its judgment for that of the legislative department.

Hannah & Hog v. Clyne, 263 Fed., 599.

120. Power to Amend in Congress:—

The power to propose amendments to the constitution is in congress alone and the form in which congress makes such proposal is not subject to judicial review.

Christian Feigenspan Inc. v. Bodine, 264 Fed., 189.

121. Property:—

The National Prohibition Act of October 28th, 1918, is not invalid because it provides for taking private property for public use without compensation.

Christian Feigenspan Inc. v. Bodine, 264 Fed., 189.

National Prohibition Act is constitutional though it amounts to confiscation of property under the fifth amendment.

Corneli v. Moore, 267 Fed., 456.

122. Reed Amendment:—

Reed amendment held constitutional.

Ozello v. United States, 268 Fed., 242;

United States v. Hill, 248 U. S., 420;

United States v. Simpson, 252 U. S., 465.

123. Right of Trial by Jury:—

The National Prohibition Act is not unconstitutional because it denies the right of trial by jury where there is a violation of the injunction.

Lewinsohn v. United States, 278 Fed., 421.

124. Section One:—

Section one of the eighteenth amendment is not a delegation of powers to be exercised, but a mandate operated by its own terms.

Christian Feigenspan Inc. v. Bodine, 264 Fed., 189;

United States v. Murphy, 264 Fed., 842.

125. State Powers:—

States have exclusive power within their border over sale of intoxicating liquor under constitutional amendment number ten before the eighteenth amendment became effective.

Hannah & Hog v. Clyne, 263 Fed., 599.

126. The Power of the United States to Restrict:—

If the nature and condition of restriction upon the use or disposition of property is such that a state could under the police power impose it consistently with the fourteenth amendment without making compensation then the United States may for a permitted purpose impose a like restriction consistently with the fifth amendment without making compensation; for prohibition of the liquor traffic is conceded to be an appropriate means of increasing war efficiency.

Hamilton v. Kentucky Distilleries and Warehouse Co.,
251 U. S., 146 (40 S. Ct., 106).

127. The Rule as to Construction:—

Every constitutional or statutory division must be construed with the purpose of giving effect if possible to every other constitutional or statutory provision.

Elrod v. Moss, 278 Fed., 123;

Downes v. Bidwell, 182 U. S., 244;

South Carolina v. United States, 199 U. S., 437.

Nothing is better settled than that in the construction of a law its meaning must first be sought in the language employed. If that be plain it is a duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it.

United States v. Standard Brewing Co., 251 U. S., 210 (40 S. Ct., 139);

Lake Co. v. Rollins, 130 U. S., 662 (9 S. Ct., 651);

Bate Refrigerator Co. v. Sulzberger, 157 U. S., 1, 33 (15 S. Ct., 508).

As a matter of ordinary construction where several words are followed by a general expression which is as much applicable to the first and other words as to the last that expression is not limited to the last which applies to all, consequently we think it clear that the framers of the statutes intentionally used the phrase "other intoxicating" as relating to and defining the immediately preceding designation of wine and beer.

United States v. Standard Brewing Co., 251 U. S., 210 (40 S. Ct., 139).

128. Title:—

The federal constitution does not require that the object or purposes of a congressional act be indicated by the title.

Wagman v. United States, 269 Fed., 568;

Goodlett v. Louisville R. R., 122 U. S., 391-408-409.

129. To Determine if Search Is Reasonable:—

To determine whether or not a search is reasonable is purely a judicial question.

United States v. Batmena, 278 Fed., 231.

130. Transportation:—

The forbidding of transportation of liquor for beverage purposes is valid under constitutional amendment eighteen.

Corneli v. Moore, 267 Fed., 456.

131. War Time Act of 1918:—

War Time Act of November 21st, 1918, does not contravene article ten of the amendment to the constitution.

United States v. Minery, 259 Fed., 707.

War Time Act not repealed because of eighteenth amendment to the constitution. Act itself provided own limitations which are until demobilization as proclaimed by the President.

United States v. Minery, 259 Fed., 707;

Simon et al. v. Moore, 261 Fed., 638;

Hannah & Hog v. Clyne, 263 Fed., 599.

War Time Act held constitutional.

United States v. Ranier Brewing Co. et al., 259 Fed., 359;

Jacob Hoffman Brewing Co. v. M'Elligott, 259 Fed., 321.

Prohibiting the manufacture and sale of intoxicating liquor during war time is within the power of congress.

United States v. Baumgartner, 259 Fed., 722;

Scatena et al. v. Caffey, 260 Fed., 766.

DEFINITIONS.

132. Beer and Wine:—

Use of words beer, wine or other intoxicating liquor under act of November 21st, 1918, refers to beer and wine which are intoxicating in fact.

United States v. Baumgartner, 259 Fed., 722;

United States v. Ranier Brewing Co. et al., 259 Fed., 359;

Jacob Hoffman Brewing Co. v. M'Elligott, 259 Fed., 321;

United States v. Petts et al., 260 Fed., 663.

133. Distance:—

Distance in reference to a prosecution for selling liquor within a five mile zone around a military camp means a straight line along a horizontal plane.

Evans v. United States, 261 Fed., 902.

134. Doubtful Words:—

Doctrine of "Noscitur a Sociis" applies to doubtful words or terms. Correct meaning must be determined by associate words or terms which are clear.

United States v. Baumgartner, 259 Fed., 722.

135. Hard Cider:—

"Hard Cider" is cider possessing a stimulating and intoxicating effect due to its acquisition of a substantial

and potent alcoholic contents through the processes of fermentation.

United States v. Dodson, 268 Fed., 397.

136. Intoxicating Liquor:—

Intoxicating liquor is any liquor intended for use as a beverage or capable of being so used which contains such proportion of alcohol that it will produce intoxication when imbibed in such quantities as is practically possible for man to drink.

United States v. Baumgartner, 259 Fed., 722.

137. Liquor:—

“Liquor” referred to in the National Prohibition Act means “intoxicating liquor.”

United States v. Auto City Brewing Co., 279 Fed., 132.

138. Property:—

The use of the words “property,” “design,” for the manufacture of liquor in the National Prohibition Act, Title II, paragraph twenty-five, includes a still and a stilling apparatus, whether it is set up or not, as well as mash, wort, and wash.

United States v. Phac., 268 Fed., 392.

139. Sweet Cider:—

“Sweet cider” is a cider before fermentation or cider in which fermentation has been prevented and has not acquired an alcoholic content.

United States v. Dodson, 268 Fed., 397.

“Sweet cider” is a non-alcoholic beverage and within the dictionary definition of “soft drink” as defined in the century dictionary. “Hard cider” is fermented cider.

“Sweet cider” is a cider before fermentation.

Monroe Cider Vinegar and Fruit Co. v. Riordan, 280 Fed., 624.

DEPARTMENT HEADS.

140. Authority to Promulgate Regulations:—

The law is established that the President may exercise through the heads of departments the power vested in

him. This applies to promulgation of regulations by commissioner of internal revenue, etc.

Maresca et al. v. United States, 277 Fed., 727;

United States v. Fletcher, 148 U. S., 84;

Porter v. Cable, 246 Fed., 244.

ENTRAPMENT.

141. Held Insufficient Defense:—

Entrapment held insufficient as a defense.

Andrews v. United States, 162 U. S., 420;

Price v. United States, 165 U. S., 311.

142. Prosecution May Show Acts of Violation Before Entrapment:—

When the defense is one of entrapment it is competent to show that similar unlawful transactions took place prior to alleged entrapment for the purpose of rebutting this defense.

Billingsley v. United States, 274 Fed., 86.

This is true, although the evidence of prior transactions would create suspicion of unlawful action only.

Billingsley v. United States, 274 Fed., 86.

Where defendant claimed he was entrapped into a violation of the law and that he was operating a grocery store and not a saloon, it may be shown he made statements that the grocery store was ostensible only.

Billingsley v. United States, 274 Fed., 86.

143. Public Policy Estops Entrapment:—

Public policy forbids that officers sworn to enforce laws should seek to have the laws violated and that those whose duty it is to detect criminals should create them; so that, when an officer induces a person who has had no intention of committing a crime, to violate the law, courts will not lend their aid in punishing a person thus lured into crime.

Billingsley v. United States, 270 Fed., 89;

United States v. Whight, 38 Fed., 109;

Woo Wai v. United States, 223 Fed., 412;

Grimm v. United States, 156 U. S., 604;

Goode v. United States, 159 U. S., 663-669;

Goldman v. United States, 220 Fed., 57-62;

See, also, Martin v. United States, 278 Fed., 913;

273 Fed., 35; 249 Fed., 191.

Note.—For additional cases on entrapment, see Brief 18, A. L. R., 143; also 8 R. C. L., 128.

144. Selling to Agent Held Not Entrapment:—

The officers asked defendant to serve them with cough syrup. They were served with whiskey. This is not entrapment.

Farley v. United States, 269 Fed., 721;

Fiunkin v. United States, 265 Fed., 1.

145. When Entrapment Is Permissible:—

Entrapment is permissible as well as the use of a decoy in disclosing a criminal act, but the entrapment must not be of such nature as to create a crime.

United States v. Healy, 202 Fed., 349.

EVIDENCE ADMISSIBLE.**146. Admission:—**

Evidence is admissible to show that defendant admitted owning liquor.

Wiggins v. United States, 272 Fed., 41.

147. Evidence Admissible Although at Variance:—

Evidence which varied from proof of overt act held competent in a charge of conspiracy.

Alderman et al. v. United States, 279 Fed., 259.

148. Evidence of Sale Admitted, Though Not Made by Defendant:—

Objection to evidence tending to prove that sale of intoxicating liquor was made to one acting as bartender and not the defendant is without merit, where it appears in the evidence that the defendant had knowledge that sale had been made by his bartender.

Waffee v. United States, 276 Fed., 497.

149. Increase of Alcoholic Content:—

An information charged defendant with selling cider containing more than one-half of one per cent of alcohol by volume held not sustained by evidence of sale of cider containing less than such per cent, even though it later increased its alcoholic content.

United States v. Dodson, 268 Fed., 397.

150. Liquor Found on Person:—

Liquor found on person may be used as evidence even if seized without search warrant.

United States v. Snyder, 278 Fed., 650.

151. Original Pleadings, Etc., Admitted:—

Original pleadings, affidavits, etc., are properly admitted in evidence on a hearing of contempt for a violation of an injunction for the purpose of showing that action was pending and that defendant had been served.

Allen v. United States, 278 Fed., 429.

152. Package Resembling in Appearance Those Containing Whiskey Held Admissible:—

Where it was shown by the evidence that two packages of whiskey were received through the mails testimony that other packages of a similar description were received at a prior time was held admissible.

Ciafirdini v. United States, 266 Fed., 472.

153. Telegram Not Received, Held Admissible:—

Indictment charged as a part of a conspiracy the sending of a telegram. It was shown the telegram was sent, but it was not shown it was received. Telegram, however, was held to be admissible under the circumstances.

Alderman et al. v. United States, 279 Fed., 259.

154. Whiskey Found in Shop of Defendant's Brother Held Admissible:—

The evidence showed that a brother of the defendant and one of his employees had a rented post office box and that two packages of whiskey were sent through the mails in the care of these boxes, although bearing fictitious addresses. It was also shown that the brother of the defendant and his employee sent telegrams to defendant in Cincinnati, from which point the packages were mailed. It was held competent to show by government agent that he found a large quantity of whiskey in the brother's shop.

Ciafirdini v. United States, 266 Fed., 471.

155. Whiskey Tags Admitted, Though Not Identified:—

Certain tags were used in making purchases of liquor in violation of prohibition act. It was held that tags were properly admitted in evidence, although not identified or secured by reason of a search warrant.

Cabiale et al. v. United States, 276 Fed., 769;

Adams v. New York, 192 U. S., 585;

Weeks v. United States, 232 U. S., 383.

EXCEPTIONS AND OBJECTIONS.**156. Should be Specific:—**

A general exception to the general charge of the court is insufficient.

Wagman v. United States, 269 Fed., 568;

Anthony v. Louisville R. R. Co., 132 U. S., 172.

Objections and exceptions must be specific and sufficiently definite to inform the court of precise ruling complained of.

Waffee v. United States, 276 Fed., 497;

United States v. Fidelity Co., 236 U. S., 512;

Gardner v. United States, 230 Fed., 575.

A general exception will not be considered by the court except where there is manifest error in the charge, upon a question vital to the defendant.

Tucker v. United States, 224 Fed., 833-840.

157. Taken at Once:—

Objections to error of the court in misstating the evidence must be taken at once.

United States v. Schwartz, 276 Fed., 397;

Hickory v. United States, 160 U. S., 408;

Riddle v. United States, 244 Fed., 695.

Exceptions should be taken while the jury is at the bar, otherwise reviewing court will not consider them.

Clyatt v. United States, 197 U. S., 207;

Williams v. United States, 158 Fed., 30.

FORFEITURE.**158. Bond not Cancelled Until Trial:—**

Bond given for return of seized property cannot be cancelled until the expiration of time without which trial can be had.

United States v. One Cadillac Touring Car, 274 Fed., 470.

159. Conviction in State not Enough to Warrant Forfeiture:—

Conviction in a state court is not enough to warrant forfeiture of property under National Prohibition Act, Section 26.

United States v. One Buick Roadster, 276 Fed., 407;

United States v. One Cadillac Touring Car, 274 Fed., 470.

160. Forfeiture not Sustained:—

A forfeiture of an automobile for transportation of liquor in violation of Section 26 of the National Prohibition Act will not be sustained where the record fails to show that the persons in charge of the said vehicle were violating the act or that they had been prosecuted and convicted as required by Section 26.

Reo Atlanta Co. v. Stearns, 279 Fed., 422.

161. Kept Under the Act Meaning "Kept for Sale":—

An automobile is not subject to a forfeiture under Section 21 of the National Prohibition Act unless it can be shown that intoxicating liquors were sold, kept, manufactured or bartered in said automobile. The word "kept" meaning kept for sale or other commercial purposes.

United States v. One Cadillac Touring Car, 274 Fed., 470;

Street v. Lincoln Safe Deposit Co., 254 U. S., 88.

162. Lienors Protected:—

Lienors are protected on forfeitures.

United States v. One Paige Automobile, 277 Fed., 524.

163. No Forfeiture Until After Conviction:—

An automobile cannot be forfeited and sold under Section 26 of the National Prohibition Act until such persons arrested for its unlawful use have been convicted.

United States v. One Cadillac Touring Car, 274 Fed., 470;

United States v. Slusser, 270 Fed., 818;

United States v. Stevens Automobile, 272 Fed., 188.

164. No Need to Hold Great Amount of Whiskey for Evidence:—

There is no justification for holding a great amount of whiskey taken as evidence when a small amount furnished sufficient evidence to convict.

Hughes v. Falvey, 269 Fed., 865;

Dorsey v. District of Columbia, 265 Fed., 1005.

165. Not Under Custom Laws:—

Proceedings to work forfeiture of vehicle should be brought under Section 26 of the National Prohibition Act and not under the custom laws.

United States v. One Paige Automobile, 277 Fed., 524.

HABEAS CORPUS.**166. Competent Evidence Necessary to Hold:—**

Accused will be discharged by court on habeas corpus if there is no competent evidence against him constituting probable cause.

United States v. Kallos, 272 Fed., 742.

167. Due Process of Law:—

Definition of due process of law, see:

Frank v. Mangum, 237 U. S., 309;

Brown v. New Jersey, 175 U. S., 172.

168. No Appellate Powers in District Court:—

District court cannot exercise appellate power over another district court.

Rogers v. Desportes, 268 Fed., 86.

169. Petition Must be Specific:—

...

It is incumbent on petitioner to show that he is being unlawfully detained, therefore petition must set forth facts sufficient to fully advise the court.

Hines v. Mikele, 259 Fed., 28.

170. Power of Circuit Court to Issue:—

A circuit judge has authority to grant writ of habeas corpus.

Ex Parte Craig, 274 Fed., 177;

In Re: David Lamar, 274 Fed., 160.

171. Release of Persons from State Authorities:—

Defendants were in custody of a federal officer charged with a violation of the Volstead Act. While in such custody they were arrested and taken from the custody of the federal officers by state authorities. Held habeas corpus would lie to secure discharge from custody of state officers.

Ex Parte Ramsey et. al., 265 Fed., 950.

The federal court has jurisdiction and may make inquiry into the detention of prisoners by state authorities.

Ex Parte Ramsey et. al., 265 Fed., 950.

172. Release of Prisoner in State Custody:—

Only in exceptional cases should a federal judge exercise the power conferred upon him to issue a writ of habeas

corpus to release one who is in custody of state authorities.

Ronale, 117 U. S., 241;

Shapley v. Cahoon, 258 Fed., 757.

173. Review of Commissioner's Finding:—

Upon habeas corpus, the court may review the evidence to ascertain what it really shows, and, if it finds that all of the evidence taken together does not support the commissioner's finding of probable cause, his ruling may be disregarded and the defendant discharged.

United States v. Kallas, 272 Fed., 742;

Pereless v. Weil, 157 Fed., see page 421.

174. Violation of Constitutional Rights Necessary to Release Prisoner Held by State Authorities:—

In order to entitle petitioner to release from state authorities, it must be shown that he is held in violation of some constitutional right.

United States v. Briggs, 266 Fed., 434.

If there has been an invasion or denial of a constitutional right the prisoner may be discharged by writ of habeas corpus.

Ex Parte Craig, 274 Fed., 180.

175. Voluntary Surrender Does Not Effect Right:—

The fact that a federal officer voluntarily surrenders himself to state officials does not deprive him of the right to determine the legality of his arrest by habeas corpus.

Ex Parte Beach, 259 Fed., 956.

176. When Court Has no Authority to Grant:—

Accused was arrested for violation of the Volstead Act upon verbal direction of district attorney. It was held that in view of the fact that arrest could not be made on mere verbal directions of the district attorney that there was no jurisdiction in federal court to release prisoner on writ of habeas corpus, such authority being in the state court.

Ex Parte Swift, 276 Fed., 57.

177. Will not Inquire as to Extradition:—

When offender is extradited from one state to another the federal court will not inquire into any irregularity in connection with the extradition.

Ex Parte Shears, 265 Fed., 959.

178. Who May Apply:—

The practice of a "next friend" applying for a writ of habeas corpus is ancient and fully accepted. But the complaint must set forth some reason or explanation satisfactory to the court showing why the detained person does not sign and verify the complaint and who the next friend is.

United States v. Houston, 273 Fed., 915.

179. Writ Will Not Serve as Writ of Error:—

A writ of habeas corpus cannot be made to perform the office of a writ of error, nor can it be invoked to review an erroneous judgment of a court of competent jurisdiction. It challenges the jurisdiction of the court.

Ex Parte Craig, 274 Fed., 180;

In Re: Debs, 158 U. S., 564;

Ex Parte Yarbrough, 110 U. S., 651;

Ex Parte Watkins, 28 U. S., 193;

Oremely v. United States, 273 Fed., 977.

IMPEACHMENT.**180. Animosity:—**

Animosity may be shown if sufficient to influence witness.

United States v. Post, 135 Fed., 1.

181. Collateral Attack Improper:—

It is not proper to attack credibility of witness by raising as an issue his honesty on an entirely different subject than the one at bar.

Daniels v. United States, 196 Fed., 459.

182. Good Character:—

The court did not err in refusing to permit witness to testify to good character of other witnesses when the character of the latter had not been assailed.

Woey Ho v. United States, 109 Fed., 888.

183. Impeachment:—

Facts constituting impeachment.

The Strathdon, 101 Fed., 600.

When maxim "Falsus in uno falsus in omnibus" will apply.

The Helen v. Martin, 180 Fed., 317.

184. Inconsistent Statements:—

Inconsistent statements made out of court.

Chicago Northwestern Ry. Co. v. DeClow, 124 Fed., 142.

185. Interest:—

Interest may be shown.

Wabash Screen Door Co. v. Black, 126 Fed., 721.

186. Not Necessary to Contradict:—

It is not absolutely necessary that a witness be contradicted to make his testimony unsatisfactory. Inaccuracies, improbabilities, loss of memory, lack of intelligence, evasion of questions may all indicate the weight to be given to a witness' testimony.

United States v. Lee Helen, 118 Fed., 442.

187. Own Witnesses:—

Cannot impeach own witness.

In Re: San Miguel Gold Mining Co., 197 Fed., 126.

188. Proper to Ask Witness About Drinking:—

Witness may be asked if he was drinking at or about the time which he has been testifying.

Armour & Co. v. Skene, 153 Fed., 241.

189. Questions as to Previous Conviction:—

Held, That district attorney could ask accused if he had not been previously convicted of using the mails to defraud and whether or not he was using a different name at the time of the conviction.

Ball v. United States, 147 Fed., 32.

190. Sustaining Witnesses:—

Witnesses may be used to sustain witness threatened with impeachment.

Dimmick v. United States, 135 Fed., 257.

191. Witness May Testify That He was Innocent:—

Defendant on cross examination in answer to questions evidently intended to discredit his testimony admitted that he was an inmate of a prison upon conviction for larceny. On re-direct he was permitted to testify that he was innocent of the charge, held not error.

Wagman v. United States, 269 Fed., 568.

INDICTMENT AND INFORMATION.**192. Affidavit Before Notary Public:—**

Information was supported by affidavit sworn to before a notary public. Held that this did not invalidate the information when no objection was made before verdict.

Waffee v. United States, 276 Fed., 497;

Simpson v. United States, 241 Fed., 841.

193. Articles of War:—

Where the defendant was charged with transporting liquor within a military zone indictment was held not defective because it failed to aver that defendant was not punishable under Articles of War.

Robertson v. United States, 262 Fed., 948.

194. Averment as to Statute not Necessary:—

It is not essential that statute relied upon be alleged in the indictment.

Maresca et. al. v. United States, 277 Fed., 727.

195. Charging Nuisance:—

Where counts of an information charged that possession is prohibited and unlawful and follows the statute it is a sufficient charge of the maintenance of a nuisance.

Feigen v. United States, 279 Fed., 107;

Young v. United States, 272 Fed., 967.

196. Commencement of Transportation:—

An indictment under Reed amendment is not necessarily defective because it fails to state the point from which said transportation started.

Ciafirdini v. United States, 266 Fed., 471.

197. Date in Indictment:—

The date in an indictment does not necessarily limit the prosecution to proof of commission of the offense upon that identical date, provided the date proven is prior to the date of filing the indictment and is in such reasonable proximity to the actual date that the defendant could not be mislead thereby.

Billingsley v. United States, 274 Fed., 86;

United States v. Mallory, 31 Fed., 19;

Dierks v. United States, 274 Fed. 75.

Nor is it necessary to amend an indictment as to date so as to make admissible testimony of a witness to the actual date of offense.

Billingsley v. United States, 274 Fed., 86.

198. Endorsement:—

The endorsement is no part of the indictment, which sufficiently sets out the offense by stating facts which bring it within the applicable law.

Wagman v. United States, 269 Fed., 568.

199. Endorsement of Witnesses:—

A bill of particulars was refused and witnesses were allowed to testify for the government whose names were not endorsed upon the indictment. Held. This matter rested in the discretion of the trial court and will not be disturbed unless discretion is abused.

Mayer v. United States, 259 Fed., 216.

200. Essentials:—

An indictment should set forth accurately every ingredient of which the offense is composed. If the crime is made up of acts and intent these must be set forth with reasonable particularity as to time and place; the defendant should be informed as to the precise nature of the charge made against him and also that it may enable him to sustain a plea of former acquittal or conviction.

United States v. Dowling, 278 Fed. 633;

Johnson v. United States, 87 Fed., 187;

United States v. Cruikshank, 92 U. S., 543;

Blutz vs. United States, 153 U. S., 308;

Brown v. United States, 143 Fed., 60;

Floren v. United States, 186 Fed., 961;

Harper v. United States, 170 Fed., 385.

201. Exceptions of Act:—

An information charging possession of intoxicating liquors declaring it unlawful to have possession of said liquors "except as hereinafter provided" need not allege that the possession was not under the exceptions.

Ex Parte Ramsey et. al., 265 Fed., 950.

202. Facts Not Constituting a Bar:—

It was objected that both counts of an indictment were supported by the same evidence and that conviction on

the first count should bar conviction on the second, objection was held to be of no avail when evidence disclosed a violation of both possession and maintaining a common nuisance as set forth in separate counts.

Page et. al. v. United States, 278 Fed., 41.

203. Habeas Corpus:—

Habeas Corpus will not lie to raise insufficiency of indictment.

268 Fed., 461.

204. Intoxicating:—

Defendant was charged with selling malt product. "Commonly known as lager beer," containing as much as one-half of one per cent of alcohol. Information did not include that it was intoxicating. Held. Good on demur.

United States v. Schamauder, 258 Fed., 251.

Must contain allegation that liquor sold was of an intoxicating nature.

United States v. Baumgartner, 259 Fed., 722.

Indictment charged defendant with violation of act of November 21st, 1918, by manufacturing malt liquor having an alcoholic content of one-half of one per cent or more. It did not allege that liquor was intoxicating. Held. Bad on demur.

United States v. Standard Brewery, 260 Fed., 486.

It is not necessary that an indictment should allege that beer under the War Time Act is intoxicating.

United States v. Pittsburgh Brewing Co., 260 Fed., 762.

205. Instituted by Commissioners:—

District court has authority to permit an information to be filed though the proceeding was instituted by a commissioner.

United States v. Metzger, 270 Fed., 291.

206. Knowingly Sell:—

The defendant was charged with violating the National Prohibition Act. He had been duly licensed under Title Two, Paragraph Four, to operate a perfumery still. The information failed to charge that he did "knowingly

sell" intoxicating liquor. It was also shown that he received no notice or had he a hearing as required by Title Two, Paragraph Four and Five of the Act. It was held that no violation of the law was proven.

United States v. Mozzone, 268 Fed., 652.

207. Leave to File Information:—

Leave to file information will be refused when the government has failed to show probable cause and the only evidence presented was illegally obtained.

United States v. Quaritius, 267 Fed., 227.

208. Matter of Proof:

Information was held sufficient which charged the sale of "alcoholic liquor" and labeled "Newbro's Herpicide." Question of whether or not it was in prohibition was a matter of proof.

United States v. Kinsel, 263 Fed., 141.

209. Misapprehension of Statutes:—

Where an indictment properly charges an offense under the laws of the United States that is sufficient to sustain, although United States attorney may have supposed that the offense charged was covered by a different statute.

United States v. Puhac, 268 Fed., 392;

Williams v. United States, 168 U. S., 382.

210. Must Set Forth Facts:—

The indictment must set forth facts and not the law.

United States v. Nixon, 235 U. S., 231.

Even if in words of statute indictment must set forth the facts.

Martin v. United States, 168 Fed., 198;

United States v. Hess, 124 U. S., 483.

211. No Objection After Verdict:—

Where an indictment was in the words of the statute and it had not been challenged by demur or otherwise and the defendant having failed to avail himself of the right to require a bill of particulars in a proper case it was held too late to object after verdict.

Ozello v. United States, 268 Fed., 242.

212. Not Germain:—

Matter not german is considered surplusage.

Maresca et. al. v. United States, 277 Fed. 727.

213. Not Necessary to Show Defendant as the Proprietor:—

Under information charging maintenance of room, etc., where it was shown defendant had on several occasions sold whiskey, it was held that it was unnecessary to prove that he the defendant was the proprietor to secure his conviction as principal.

Vesely v. United States, 276 Fed., 693.

214. Penalties:—

In a case where the National Prohibition Act imposes a more severe penalty for a second offense than does a state court for a violation of the state statute does not authorize the refusal of leave to file an information charging violation of the federal law. However, the court will take cognizance of the punishment previously given the defendant so that he may not be twice punished for the same act.

United States v. Holt, 270 Fed., 639.

215. Possession:—

An indictment containing allegation that defendant willfully and unlawfully and knowingly did keep on the premises certain described intoxicating liquors is sufficient to comply with the statute. Under the provisions of Section 32, Title II of the Act, it was unnecessary to include more.

Herine v. United States, 276 Fed. 806.

On an indictment for possession prosecution is not required to prove that the defendant did not have a permit.

Laurie v. United States, 278 Fed., 934;

Kiersky v. United States, 263 Fed., 684;

Faranoe v. United States, 259 Fed., 507.

The continuous possession of liquor need not be alleged.

Feigen v. United States, 279 Fed., 107.

Indictment charged unlawful possession of liquor. Held sufficient.

United States v. Everson, 280 Fed., 126.

216. Presumption:—

Indictment alleged that defendants sold a glass of alcohol mixed with some substance to the grand jury unknown. There was no evidence tending to prove that the grand jurors knew or were informed what the substance was

which was mixed with the alcohol charged to have been sold. The presumption was that such substance was unknown to the grand jury. This presumption dispensed with the necessity of proving the averment in that regard.

For *et. al. v. United States*, 269 Fed., 609;
United States v. Riley, 74 Fed., 210.

217. Properly Consolidated:—

An information charged the unlawful sale of intoxicating liquor. The second count of which charged the maintaining of a room, etc., from which liquors were sold. The second information charged unlawful transportation. Held that these could be properly consolidated for trial under Section 1024 R. S. (Comp. St., 1690) and Section 32 of Title II of the National Prohibition Act.

Vesely v. United States, 276 Fed., 693.

218. Prosecution by Information:—

When prosecution may be by information.

United States v. Achen, 267 Fed., 595.

219. Right to File Information:—

The district attorney's right to file information is not effected by the fact that defendant is at time of filing said information under arrest and bound over to the grand jury.

Waffee v. United States, 276 Fed., 497.

The right of the district attorney to file an information is not an absolute or unqualified right. Before doing so he must secure leave of the court.

Waffee v. United States, 276 Fed., 499.

The granting of leave to file information by the court is not subject to review unless there is a clear abuse of discretion on the part of the court.

Waffee v. United States, 276 Fed., 497.

220. Sale:—

Indictment charged sale of intoxicating liquor for beverage purposes held sufficient.

Heitler v. United States, 280 Fed., 703.

Information charged that defendant "did sell certain intoxicating liquor to-wit: claret wine containing one-half of one per cent or more of alcohol by volume and then

and there fit for use for beverage purposes, etc.” Held, the objection that information did not state wine was sold for beverage purposes was of no effect.

Cabiale et. al. v. United States, 276 Fed., 769.

If information alleges that sale was “then and there prohibited and unlawful and in violation of Section 3, of Title II, National Prohibition Act, the averment necessarily excludes the idea that sale was for legitimate purposes.

Cabiale et. al. v. United States, 276 Fed., 769;

Tyke v. United States, 254 Fed., 225;

Rothman et. al. v. United States, 270 Fed., 31;

Melason v. United States, 256 Fed., 783;

Thurston v. United States, 241 Fed., 335;

Wallace v. United States, 243 Fed., 300.

221. Selling Liquor is a Misdemeanor:—

Selling liquor is not a capital or infamous crime but is merely a misdemeanor which may be prosecuted under an information.

Waffee v. United States, 276 Fed., 497;

Ex Parte Wilson, 114 U. S. 417;

United States v. Lindsay-Wells Co., 186 Fed., 248;

United States v. Quaritius, 267 Fed., 227;

United States v. Achen, 267 Fed., 595;

United States v. Baugh, 1 Fed., 784.

222. Traffic of Selling Liquor:—

It is not necessary under the National Prohibition Act to prove allegations that the defendant was engaged in the traffic of selling liquor. It is enough to show that he sold liquor in any quantity.

Farley v. United States, 269 Fed., 721.

223. Transportation:—

It is not necessary for an indictment to charge or the evidence to show an actual transportation under the act of March 3rd, 1917.

Tacon v. United States, 270 Fed., 88;

Ex Parte Westbrook, 250 Fed., 636.

224. Under Law Repealed:—

The fact that an indictment is returned under an act since repealed does not effect the validity of the indictment if it has application to a then existing law.

Farley v. United States, 269 Fed., 721;

Verdin v. United States, 257 Fed., 550-551;

Williams v. United States, 168 U. S., 382.

The fact that a certain count of an indictment was held bad because based on a repealed statute held no reason for reversing conviction on good counts remaining.

Maresca et. al. v. United States, 277 Fed., 727.

Selvester v. United States, 170 U. S., 262.

225. Variance:—

The indictment alleged that sale was made to John F. Burke. The proof was that sale was made to J. L. Burke. Held. Not a variance.

Saucedo v. United States, 268 Fed., 830.

A mistaken reference in the indictment to the appropriate act upon which the indictment is based is not fatal.

Wagman v. United States, 269 Fed., 568;

West v. United States, 258 Fed., 413-15-16;

Grandi v. United States, 262 Fed., 123.

Where an indictment alleges a transportation to a certain point and the proof shows that the transportation was made two or three miles from the point alleged it is an immaterial variance.

Bishop v. United States, 259 Fed., 195.

The fact that indictment refers to wrong act held not fatal when charge showed offense under war time act.

Maresca et. al. v. United States, 277 Fed., 727.

Information for unlawfully maintaining a room, etc., for sale of intoxicating liquor held sufficient.

Vesely v. United States, 276 Fed., 693;

Young v. United States, 272 Fed., 967.

It is immaterial that averment in indictment stated one city where the proof showed that it was in another, but in the same district.

Heitler v. United States, 280 Fed., 703.

Information alleged that the name of a certain vessel was the "Molly O." Testimony showed the name as being "Molly." Held not to be a variance.

Alderman et. al. v. United States, 279 Fed., 259.

Where an Alabama sheriff testified that he had seized liquor in a certain town in Louisiana and where it is quite evident that the sheriff had manifestly made a mistake and where the standard maps showed that the

town in question to be in Alabama and not in Louisiana it was held not to be a variance.

Tacon v. United States, 270 Fed., 88.

226. Verdict:—

Indictment cured by verdict.

275 Fed., 294.

227. Verification:—

Information need not be verified unless warrant is issued.

275 Fed., 394.

228. What Is Intoxicating.

An indictment must charge each and every element of offense. We cannot say as a matter of law that a beverage containing not more than one-half of one per cent of alcohol is intoxicating.

United States v. Standard Brewing Co., 251 U. S., 210 (40 S. Ct., 139);

Evans v. United States, 153 U. S., 584, 587 (41 S. Ct., 934).

229. When Government Need Not Elect:—

Government need not elect between counts because both counts charged an offense to have been committed on the same date, when it is clear from the indictment that counts charged separate offenses.

Billingsley v. United States, 274 Fed., 86.

230. When Objections Should Be Made:—

One who made affidavit filed with the information was called as a witness for the government. It appeared upon examination that he had no personal knowledge as to the truth of matters set forth in the information. Objection was not made by counsel for the defendant until case reached appellate court. The court held this to be too late. Counsel should have called this matter to the court's attention at conclusion of witness's testimony, and moved the court to revoke leave granted to file information and dismiss prosecution.

Waffee v. United States, 276 Fed., 497.

It is too late to object that indictment did not negative the fact that liquor was for export sale after verdict had been reached.

Maresca et al. v. United States, 277 Fed., 727.

231. Where Indictment Charged Offense Under One Section, Punishment Cannot Be Had Under Another:—

Information charged that defendant did “unlawfully transport in a Buick automobile some intoxicating liquor.” This describes an offense under Title II, section III, carrying a punishment not exceeding \$500 for the first offense. On this information defendant could not be held to have violated section 21 of the same act and consequently could not be subject to the penalty for violation of section 21.

Healey v. United States, 276 Fed., 711.

Information cannot be aided by intendment.

Healey v. United States, 276 Fed., 711;

United States v. Post, 113 Fed., 852-854;

United States v. Cruikshank, 92 U. S., 542.

232. Who May File:—

Information cannot be filed by special assistant attorney general.

273 Fed., 620.

INJUNCTION.

233. Acceptance of Tax:—

Equity will not compel acceptance of internal revenue tax, although nothing in the National Prohibition Act prohibits acceptance of such tax.

Corneli v. Moors, 267 Fed., 456.

234. Adequate Remedy:—

An injunction will not be granted if there is an adequate remedy at law.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

235. Another Injunction on Same Facts:—

District judge authorized to issue injunctions by district court composed of three judges acting under judicial code 266 may be authorized to issue an injunction for similar cases which are essentially indistinguishable as to facts.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

236. Claim of Right Must Be in Good Faith:—

If the bill states a case of rights arising under the fourteenth amendment to the federal constitution it is well

settled that the federal court has jurisdiction if the claim of federal right is made in good faith and is not frivolous, even though in the end it may turn out to be erroneous.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

237. Contempt Is Criminal in Nature:—

Contempt proceedings for a violation of an injunction are criminal in nature.

McGovern et al. v. United States, 280 Fed., 73.

238. Court Excluded from Issuing Other Injunctions Under Section 22:—

The authority contained in section 22 of the National Prohibition Act to enjoin, excludes the court from issuing injunction in other cases.

United States v. Auto City Brewing Co., 279 Fed., 132.

239. Death of Defendant:—

Death of a defendant subsequent to the entry of a judgment convicting him for contempt in violating an order abating a liquor nuisance was abated by his death.

McGovern et al. v. United States, 280 Fed., 73.

240. Defendant Does Not Lose Control Over Property:—

The authority contained in section 22 of the National Prohibition Act to enjoin does not prevent the defendant or defendants from exercising control over his or their property.

United States v. Auto City Brewing Co., 279 Fed., 132.

241. Defendant Must Obey Order:—

Where defendant has been served with restraining order the entering of which was within the jurisdiction of the court and which order the defendant has violated, he cannot in defense of a contempt proceeding instituted against him be heard to assert that the court improvidently entered the original order. It is his duty to obey the order until such time as it has been either rescinded or modified.

Lewinsohn v. United States, 278 Fed., 421;

In Re Coy, 127 U. S., 721;

Ex parte Tyler, 149 U. S., 164.

If court has jurisdiction of temporary restraining order it must be obeyed regardless of the insufficiency of the bill.

Allen v. United States, 278 Fed., 429.

242. Definition of Liquor:—

“Liquor” referred to in the National Prohibition Act means “intoxicating liquor.”

United States v. Auto City Brewing Co., 279 Fed., 132.

243. District Attorney:—

An injunction will not lie against a district attorney to enjoin him from instituting criminal proceedings under War Time Act of November 21st, 1918, upon the ground that he has exceeded his authority.

Jacob Hoffmann Brewing Co. v. M'Elligott, 259 Fed., 321.

Criminal suit in the federal court must be brought in the name of the United States and can only be brought by the United States attorney. Suit in equity to enjoin the United States attorney from instituting criminal proceedings under a statute of the United States is manifestly a suit against the United States. In such a case United States is sued as effectively as if it were a defendant by name. However, there are exceptions, viz.: If property rights are invaded or the statute unconstitutional, then it is to be treated as nonexistent. Consequently he could not be said to represent the United States in his official capacity. If under a valid statute he threatens to proceed in a manner injurious to complainant's property rights and such action is not authorized by statute he then exceeds his authority, does not represent the United States and may be enjoined.

Jacob Hoffmann Brewing Co. v. M'Elligott, 259 Fed., 321.

244. Enforcement of State Statute Enjoined:—

A state statute which imposes a tax may be enjoined in a proper case in the federal court.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

245. Enjoining Nuisance:—

What it is necessary to exhibit to enjoin nuisance.

United States v. Schott, 265 Fed., 429.

246. Facts Well Pledged:—

All facts well pleaded on defendant's motion to dismiss bill must be taken as true.

Street v. Lincoln Safe Deposit Co., 267 Fed., 706.

247. Good Service:—

Through a mistake writ of injunction was served upon a defendant instead of the injunctive order. In view of the fact that the writ contained recitals which advised the defendant of matters prohibited it was held sufficient. However, the practice is not approved.

Lewinsohn v. United States, 278 Fed., 421.

248. Irreparable Injury:—

Where a statute imposes a tax for the removal of whiskey, etc., held to threaten irreparable injury.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

249. Limitations Under Judicial Code 266:—

The court acting under Judicial Code 266 has no jurisdiction to issue final decree, but is constituted for the purpose of deciding the laws for preliminary injunction.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

Where auditor and attorney general both being state officers are made party defendants to a bill to enjoin the enforcement of a state statute, it was held to properly come under Judicial Code 266 which requires the matter to be heard by three judges, etc.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

Judicial Code 266 as amended by act of March 4th, 1913, provides that proceedings thereunder in any federal court may be stayed if "a suit shall have been brought in a court of the state having jurisdiction thereof under the laws of the state to enforce such statute or order; accompanied by a stay in such court of proceeding under such statute or order pending the determination of such suit by such state court." The suit must be brought for the purpose of enforcing the statute and a suit to enjoin such enforcement is not sufficient.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

250. Move to Dismiss if Bill Insufficient:—

If the bill is insufficient defendant may move to dismiss it or may move to dissolve the temporary restraining order under it.

Allen v. United States, 278 Fed., 429.

251. Not Necessary to Allege:—

It is unnecessary to allege that a defendant has been prosecuted and convicted of a similar criminal offense in order to invoke the jurisdiction of a court of equity.

Lewinsohn v. United States, 278 Fed., 421.

252. Payment Under Protest Considered Voluntary:—

Payment under protest is a voluntary payment unless statute provides for payment under protest; therefore, suit would not lie to recover, hence there is no adequate remedy at law.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

253. Pleadings Held Admissible on Contempt Charge:—

Original pleadings, affidavits, etc., are properly admitted in evidence on a hearing of contempt for a violation of an injunction for the purpose of showing that action was pending and that defendant had been served.

Allen v. United States, 278 Fed., 429.

254. Public Officers:—

Public officers may be enjoined from enforcing unconstitutional act because when so engaged they do not represent the United States, but are mere private individuals, volunteers and intermeddlers.

Osborn v. United States Bank, 9 Wheat., 737; 6 L. Ed., 204;

Dobbins v. Los Angeles, 195 U. S., 223; 25 Sup. Ct., 18; 49 L. Ed., 169;

Ex parte Young, 209 U. S., 123; 28 Sup. Ct., 441; 52 L. Ed., 714; 13 L. R. A. (N. S.), 932; 14 Ann. Cas., 764;

Wes. Un. Tel. Co. v. Andrews, 216 U. S., 165; 30 Sup. Ct., 286; 54 L. Ed., 430;

Herndon v. Chi., Rock Island & Pac. Ry., 218 U. S., 135; 30 Sup. Ct., 633; 54 L. Ed., 970;

Philadelphia Co. v. Stimson, 283 U. S., 605; 32 Sup. Ct., 340; 56 L. Ed., 570;

Truax v. Raich, 239 U. S., 33; 56 Sup. Ct., 7; 60 L. Ed., 131; L. R. A. 1916 D, 545 Ann. Cas. 1917 B. 283;

Wilson v. New, 243 U. S., 332; 37 Sup. Ct., 298; 61 L. Ed., 755; L. R. A. 1917 E, 938; Ann. Cas. 1918 A, 1024;

Hammer v. Dagenhart, 247 U. S., 251; 38 Sup. Ct., 529; 62 L. Ed., 1101; Ann. Cas. 1918 E, 724;

Jacob Hoffmann Brewing Co. v. M'Elligott, 259 Fed., 525, C. C. A.;

Scatena et al. v. Caffey and Edwards (Southern District of New York, August 20, 1919), 260 Fed., 756.

Officers and agents acting under an unconstitutional act are not acting in the name of the United States and may be enjoined.

Hannah & Hog v. Clyne, 263 Fed., 599;

See Poindexter v. Green Hon, 114 U. S., 270.

255. Purpose of Injunction:—

Injunctions having reference to liquor cases arising under the National Prohibition Act have as their purpose the maintenance of the status quo.

United States v. Auto City Brewing Co., 279 Fed., 132.

256. Reasonable Doubt:—

Benefit of a reasonable doubt should be given to the state since the unconstitutionality should clearly appear before injunction should issue.

J. & A. Freigberg Co. v. Dawson et al., 274 Fed., 420.

257. Restraining Public Officials:—

It is well settled by the decisions of the supreme court that a court of equity may restrain prosecuting officers either of state or of the federal government as well as other public officials to prevent a series of unauthorized prosecutions which would prove ruinous to persons affected.

Jacob Hoffmann Brewing Co. v. M'Elligott, 259 Fed., 321.

258. Section 22 Fixes Time of Temporary Injunction:—

The specific provision of section 22, National Prohibition Act, prevail over a court rule or a general statute as to the time during which a temporary injunction may remain in force.

Lewinsohn v. United States, 278 Fed., 421.

259. Service:—

It is not necessary to serve complainant with process to give the court jurisdiction over cross complainants.

Grossman v. United States, 280 Fed., 683;

Kingsbury v. Buckner, 134 U. S., 676.

260. To Prevent Nuisance:—

The National Prohibition Act of October 28th, 1919, provides that a place where liquor is illegally sold becomes a public nuisance and that a temporary injunction may be issued to abate same.

United States v. Schott, 265 Fed., 429.

261. Volstead Act Did Not Create Equity Powers:—

Federal courts possessed and exercised equity jurisdiction long before the passage of the National Prohibition Act.

Grossman v. United States, 280 Fed., 683.

262. Wrong Construction of Statutes:—

When a district attorney insists upon construing a statute incorrectly which would bring irreparable injury to parties, relief may be had by injunction.

Jacob Hoffmann Brewing Co. v. M'Elligott, 259 Fed., 321.

INSTRUCTIONS.

263. Court May Instruct as to Argument:—

It is not error to caution the jury that they must not be misled by argument of counsel.

Laurie v. United States, 278 Fed., 934.

264. Instruction on Transportation Held Error:—

A defendant purchased whiskey in one state and was carrying it across another into a third state. The court instructed the jury that if he transferred any part of it within the state to another car it constituted a violation of the Reed amendment. This instruction was held error.

Durst v. United States, 266 Fed., 65.

265. Reasonable Doubt:—

Definition of reasonable doubt.

United States v. King, 34 Fed., 302;

United States v. Jones, 31 Fed., 718;

Hopt v. People, 120 U. S., 430;
United States v. Meagher, 37 Fed., 875.

266. Sale:—

Defendant was charged with carrying on business with retail liquor dealers without payment of tax. The court charged "that proof of a single sale might warrant conviction." Held. Not reversible error under the evidence.

Weichen v. United States, 262 Fed., 941.

267. State Practice Not Followed:—

Federal practice in regard to form, etc., of instructions does not follow state practice.

Steers v. United States, 192 F., 1.

268. Supplemental Charge:—

For supplemental charge held not to be reversible, see:

Suslak v. United States, 213 Fed., 913;

Shea v. United States, 260 Fed., 807.

For instructions held error, see:

Starr v. United States, 153 U. S., 614.

269. The Use of Facts in Recent Trials to Illustrate in Charge:—

Court should not refer to recent trials for parallels in charging the jury.

Whitney v. United States, 263 Fed., 477.

270. Where Defendant Sold Interest in Property:—

Where it was claimed under a prosecution for engaging in retail liquor business, without having paid the tax, that one of the defendants had sold out his interest at a time before the first date named in the indictment and that he was after that time only a clerk for the purchaser, it was held that the court properly refused to grant the charge that "if the jury found the sale of the business to have been made in good faith the defendant should be acquitted," for the reason that he might still be guilty, although a sale had been made in good faith.

Mayer v. United States, 259 Fed., 216.

271. Written Instructions to Jury:—

It is discretionary with the court to permit written instructions to be taken to the jury room.

Garst v. United States, 180 Fed., 339.

INTENT.**272. Inference of Intent Warranted:—**

Evidence showed that defendant had still on his premises and that he was sitting near it and that in close proximity were found ingredients for making liquor. It was held this was sufficient to warrant jury in an inference of intent to violate the law.

Violette et al. v. United States, 278 Fed., 163.

273. Intent Alone Not Enough:—

It is a fundamental doctrine of the law that no man is to be punished as a criminal unless his intent is wrong, and that such wrong intent must ordinarily be followed by a wicked act—the mere intention not injuring anyone, unless developed into some act to give it form and effect.

United States v. Houghton, 14 Fed., 549.

274. Presumption:—

When one knowingly does an act the presumption arises that he intended the results which would naturally follow.

Reynolds v. United States, 150 U. S., 447.

275. Proof of Other Act Permissible if to Show Intent:—

Facts brought out on trial of defendant charged with transportation of liquor which proves him engaged in the traffic at that time held competent as showing intent, although it intended to show other offenses.

Wagman v. United States, 269 Fed., 568;

Tucker v. United States, 224 Fed., 833-840.

It is not error to admit evidence of other acts of the defendants when such acts are similar in nature and tend to throw light on the intent with which the particular act was done with which the defendant stands charged.

Walsh v. United States, 174 Fed., 615;

Brown v. United States, 142 Fed., 1;

Colt v. United States, 190 Fed., 305.

Intent changed the rules as regards admission of evidence tending to prove other offenses.

Marshall v. United States, 197 Fed., 511;

Prettyman v. United States, 180 Fed., 30.

276. Rebuttal:—

Wrongful intent may be rebutted.

Hicks v. United States, 150 U. S., 447.

JEOPARDY.

277. Conviction in Federal Court Barred:—

If a defendant is convicted under the state law he cannot again be convicted under the federal law on the same facts or for the same offense.

United States v. Peterson, 268 Fed., 864.

278. Conviction Under Ordinance Not a Bar:—

A conviction under an ordinance is not a bar to a prosecution in the federal court on the same fact.

United States v. Peterson, 268 Fed., 864.

279. Disagreement and Discharge of Jury as a Bar:—

Where prisoner was tried for felony and the case resulted in a disagreement, after which the jury was discharged without consent of the prisoner, he cannot again be tried for the same offense.

Ex parte Glenn, 111 Fed., 257;

(Order reversed.) Moss v. Glenn, 189 U. S., 506.

When plea of former jeopardy will not be heard where the jury has disagreed and been discharged.

Dreyer v. People of the State of Illinois, 187 U. S., 71;

Keerl v. State of Montana, 213 U. S., 135;

United States v. Jim Lee, 123 Fed., 741.

280. Jurisdiction of First Offense Necessary:—

There is no jeopardy in a case where indictment was dismissed prior to the time case was submitted to the jury because indictment did not charge a crime, although the jury had been sworn to hear the case, as the court did not have jurisdiction of the first offense.

United States v. Ragoff, 163 Fed., 311.

281. The Test as to Jeopardy:—

The test when double jeopardy is claimed is whether the same evidence is required to sustain the same charges. If not, then the fact that both charges grow out of one transaction does not make a single offense, when two are defined by the statute.

United States v. Sacein Rouhana Farhat, 269 Fed., 39;

Morgan v. Devine, 237 U. S., 632.

A conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support the conviction upon one of these would have been sufficient to warrant conviction upon the other. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes and if each statute required proof of an additional fact which the other does not, an acquittal or conviction under the same statute does not exempt the defendant from prosecution and punishment under the other.

Gavieres v. United States, 220 U. S., 338;
 Carter v. McClaughry, 183 U. S., 365;
 Burton v. United States, 202 U. S., 344;
 Kelly v. United States, 258 Fed., 392;
 Manning v. United States, 275 Fed., 29.

JURY.

282. Article III, Section 2, Construed in Light of Common Law:—

Section 2 of article III of the constitution requires that “the trial of all crimes, except in case of impeachment, shall be by jury.” This provision is to be construed in the light of the common law as it existed when the constitution was adopted, and the constitutional right of trial by jury limited to that class of cases, civil or criminal, which at common law were triable by jury.

Law v. United States, 169 Fed., 89;
 Callon v. Wilson, 127 U. S., 540;
 Capital Tractor Co. v. Hof, 174 U. S., 1;
 Schick v. United States, 195 U. S., 65.

283. Challenge to Grand Jury:—

Grand jurors may be challenged.

United States v. Richardson, 28 Fed., 61.

284. Definition:—

Jury means a tribunal of twelve men presided over by a court and hearing the allegations, evidence and arguments of the parties.

Freeman v. United States, 227 Fed., 743;
 Capital Tractor Co. v. Hof, 174 U. S., 1.

“Juror” refers to both grand and petit jurors.

Agnew v. United States, 165 U. S., 36.

285. Jury May View Premises:—

It is not error to permit jury to view premises when defendants are permitted to be present at time view is taken by the jury.

Reid et al. v. United States, 276 Fed., 253.

286. Jury of Twelve Not Waived:—

Defendant cannot consent to be tried by less than twelve men when jury has been impaneled.

Dickinson v. United States, 159 Fed., 801.

287. Opinion of Juror:—

A juror is not disqualified if he has an opinion, if he states that it will not affect his verdict and the court is satisfied of the truth of his statement.

Hoyt v. United States, 273 Fed., 798;

Reynolds v. United States, 98 U. S., 145;

Partan v. United States, 261 Fed., 515-17.

288. Question for the Jury:—

Time when liquor is manufactured in reference to before or after the National Prohibition Act became effective is a question for the jury.

United States v. Schwartz, 276 Fed., 397.

289. When Court May Excuse Juror:—

There is no valid ground of complaint because court of its own motion excuses juror thought by the court to be impartial where it appears that a duly qualified juror was secured to replace one released who was accepted without objections by both parties.

Vesely v. United States, 276 Fed., 693.

290. When Jury Trial May Be Waived:—

Defendant may waive trial by jury when charged with “petty offense.”

Law v. United States, 169 Fed., 89.

Consent to waiver in a criminal case cannot bind the defendant since criminal charges are not the subject of arbitration and any infliction of criminal punishment upon an individual except in pursuance of the law of

the land, is a wrong done to the state, whether the individual assented or not.

Freeman v. United States, 227 Fed., 743;

Crain v. United States, 162 U. S., 625.

291. When Service Within Year Does Not Disqualify:—

Service as a petit juror in a state court does not disqualify juror in federal court.

Papernoew v. Standard Oil Co. of N. Y., 228 Fed., 399.

Sec. 286, Federal Judicial Code, prohibiting juror from serving more than once in the year, has reference to petit jurors and not grand jurors.

National Bank v. Schufelt, 145 Fed., 509.

292. When Special Officer May Serve:—

The court may, if it is of the opinion that the marshal is an interested party, order special officer to serve the venire.

Johnson v. United States, 247 Fed., 92.

MOTION TO DIRECT VERDICT.

293. Facts Warranting Direction of Verdict:—

Evidence of facts that are as consistent with innocence as with guilt is insufficient to sustain a conviction, unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial judge to instruct the jury to return a verdict of not guilty.

Isbell v. United States, 227 Fed., 792;

Union Pacific Coal Co. v. United States, 173 Fed., 737;

Vernon v. United States, 146 Fed., 121;

Hayes v. United States, 169 Fed., 101.

294. Motion Waived:—

Motion for a directed verdict was not made at the close of the entire evidence, but only at the close of the government's case. The subsequent introduction of evidence by the defendant waived any exceptions taken to dismissal of the motion at the conclusion of the government's case.

Alderman et al. v. United States, 279 Fed., 259;

Sandals v. United States, 213 Fed., 569;

Goldman v. United States, 220 Fed., 57;

Kasle v. United States, 233 Fed., 872.

295. Opening Statement May Give Ground for Instruction:—

When by the opening statement the prosecuting attorney in a criminal case admitted a fact which would necessarily prevent a conviction, and there was opportunity for the correction of any ambiguity, error or admission in the statement, the court may upon motion close the case by directing a verdict for the accused.

United States v. Dieterich, 126 Fed., 676;

Oscanyan v. Arms Co., 103 U. S., 261;

Liverpool etc. Co. v. Commissioners, 113 U. S., 33.

296. Refusal Held Not Error:—

Held not error to refuse to direct verdict of acquittal because indictment would not sustain a conviction.

Stearns v. United States, 152 Fed., 900.

297. Result of Denial:—

At the close of the evidence on the part of the prosecution counsel for the defendant moved the court to instruct the jury to return a verdict of not guilty. This motion the court denied, to which exception was taken. This denial left it open to the court to consider whether there was any evidence to sustain the verdict, though not to pass upon the weight or sufficiency.

Hedderly v. United States, 193 Fed., 571;

Wiborg v. United States, 163 U. S., 632.

298. When Court Need Not Instruct:—

When there are several counts before the jury, it is not incumbent on the court to require a finding on one of the counts specifically if confusion might be caused in the minds of the jury thereby.

Baldwin v. United States, 238 Fed., 793.

299. When It Is Error to Direct Verdict:—

It is not competent for the court in a criminal case to instruct the jury peremptorily to find the accused guilty of the offense charged or of any criminal offense less than that charged.

Sparf & Hausen v. United States, 156 U. S., 51;

United States v. Taylor, 11 Fed., 470;

Cummings v. United States, 232 Fed., 844.

NEW TRIAL.**300. Court May Hear Evidence on Affidavits:—**

Motion for new trial gave as one of the reasons why such new trial should be granted; that the marshal while in charge of the jury answered inquiries put to him by various members of the jury. The court was held to be justified in hearing evidence to ascertain the character of remarks made by the marshal to the jury for the purpose of determining whether or not they were of prejudicial nature.

Chambers v. United States, 237 Fed., 513.

301. Determination:—

Courts should not have reasonable doubt in refusing new trial.

United States v. Jones, 32 Fed., 569.

302. Diligence Is Required to Be Shown:—

Diligence is required to be shown for purpose of securing new trial on grounds of newly discovered evidence.

Victor Fuel Co. v. Tomyawovich, 232 Fed., 662.

303. Discretionary with Court:—

Motion for new trial is directed to the sound discretion of trial court and is not subject to reversal or review unless it clearly appears that the court abused this discretion.

Laurie v. United States, 278 Fed., 934;

West v. United States, 258 Fed., 413.

Facts showing abuse of discretion in refusing new trial.

Pettine v. Territory of New Mexico, 201 Fed., 489.

304. Impeachment of Verdict:—

Affidavit of jurors as to what took place in jury room will not serve to impeach the verdict on motion for new trial.

United States v. Doubner, 17 Fed., 793.

305. Improper Remarks:—

Remark of prosecuting attorney made in reference to defendant not taking the stand held to be ground for new trial.

Rule as to sufficiency:

Wilson v. United States, 149 U. S., 60.

Rule as to sufficiency of evidence:

United States v. Ducowman, 54 Fed., 138;

United States v. Doubner, 17 Fed., 793.

Government attorney made improper remarks which were not objected to until the time of presenting the motion for new trial. Held objection was made too late.

Smith v. United States, 231 Fed., 25.

306. Misconduct of Jury:—

It is discretionary with court as to granting of new trial where there has been misconduct on part of the jury.

Buckeye Powder Co. v. Du Pont Powder Co., 223 Fed., 881.

307. Must Challenge:—

When a party has an opportunity to challenge juror and failed to do so, he will not be entitled to new trial after verdict because of the juror's disqualifications.

Papernow v. Standard Oil Co. of N. Y., 228 Fed., 399;

Kohl v. Lehlback, 160 U. S., 293.

308. Newly Discovered Evidence:—

Held not to constitute newly discovered evidence.

Skerman v. Philadelphia & R. Ry. Co., 225 Fed., 85.

309. Not Subject to Review:—

The overruling of a motion for a new trial cannot be reviewed by the appellate court.

Hunter v. United States, 264 Fed., 831;

Bishop Co. v. Shelhorse, 141 Fed., 648;

Pochontas Distilling Co. v. United States, 218 Fed., 782;

Moore v. United States, 150 U. S., 62;

Holder v. United States, 150 U. S., 92.

310. Setting Aside Order:—

When court may set aside order granting new trial.

Storey v. Storey, 221 Fed., 262.

NUISANCE.

311. A Misdemeanor:—

The offense of maintaining a nuisance is a misdemeanor which may be prosecuted by information.

Young v. United States, 272 Fed., 967;

Weeks v. United States, 216 Fed., 292.

312. Amendment.

Bill may be amended so as to state a cause of action.
United States v. Cohen, 268 Fed., 420.

313. Bill:—

Bill must be specific.
United States v. Butler, 278 Fed., 677.

314. Bill for Abatement:—

It is necessary that a bill for abatement of a nuisance should set out facts which show that the legal remedy under the act is inadequate, otherwise the proceeding might deprive the defendant of his constitutional rights of trial by jury.

United States v. Cohen, 268 Fed., 420.

It is not necessary in a bill to abate a nuisance to allege that sales were in interstate commerce.

United States v. Cohen, 268 Fed., 420.

315. Continuous Possession:—

The continuous possession of liquor need not be alleged.
Feigen v. United States, 279 Fed., 107.

316. Definition:—

The definition of a common nuisance for which one may be prosecuted criminally and a common nuisance for which one may be enjoined are the same.

United States v. Eilert Brewing and Beverage Co.,
278 Fed., 659.

Generally a common law nuisance is a wrong arising from an unreasonable or unlawful use of a house, premises, place or property to the discomfort, annoyance, inconvenience or damage of another.

United States v. Cohen, 268 Fed., 420.

The word nuisance has a well defined meaning in the law and a thing cannot be declared a nuisance by statute and abated as such when in fact it is obviously not a nuisance.

United States v. Cohen, 268 Fed., 420.

It is presumed that congress when using the word nuisance had in mind its usual and ordinary legal significance, realizing that they could not pass a law which

had the effect of wiping out the constitutional rights of citizens in private property.

United States v. Cohen, 268 Fed., 420.

317. Essentials of Bill:—

Bill must set forth clearly that liquor was sold, kept or bartered habitually, continually or recurrently.

United States v. Butler, 278 Fed., 677;

Tuttle v. Church, 53 Fed., 422.

318. Evidence Held Sufficient:—

Evidence held sufficient to convict of keeping a nuisance in violation of the National Prohibition Act.

Herine v. United States, 276 Fed., 806.

Information charging the defendant did unlawfully, willfully and knowingly violate Section 21, of Title II of the Act of October 28th, 1919, known as the National Prohibition Act, by maintaining a common nuisance in that they did unlawfully, willfully and knowingly keep on the premises certain intoxicating liquors. Held sufficient.

Kathriner et. al. v. United States, 276 Fed., 808.

Evidence held sufficient to establish nuisance under the National Prohibition Act.

United States v. Eilert Brewing and Beverage Co.,
278 Fed., 659.

319. Indictment Held Insufficient:—

Indictment for maintaining a common nuisance held insufficient.

United States v. Dowling, 278 Fed., 630.

Bill of complaint in following language held insufficient to charge nuisance: "that the defendants are maintaining and conducting a common nuisance on the premises herein described, in that intoxicating liquor containing more than one-half of one per cent of alcohol by volume has been and is being sold in the premises."

United States v. Butler, 278 Fed., 679;

Mulger v. Kansas, 123 U. S., 623 at page 672.

320. Information Adequate if it Follows Statute:—

An information charged violation of that section of the National Prohibition Act as regards a nuisance. It was

held as long as the charge followed the statute it was sufficient in description to inform the defendant of the nature of the offense charged and of such certainty as to advise him of the accusation made.

Young v. United States, 272 Fed., 967;

United States v. Simmons, 96 U. S., 360.

Where counts of an information charged that possession is prohibited and unlawful and follows the statute it is a sufficient charge of the maintenance of a nuisance.

Feigen v. United States, 279 Fed., 107.

321. Information and Belief:—

Information and belief will not warrant a court in issuing an injunction.

United States v. Butler, 278 Fed., 677.

322. Responsibility of Owner:—

To be a violation of Title II, Section 22, of the National Prohibition Act it must be shown that premises were unlawfully used with the consent of the owner or with his knowledge or such circumstances be shown which would force one to conclude that he had good reason to believe that unlawful use was being made of his property.

United States v. Butler, 278 Fed., 677.

The owners of property having been charged with maintaining a nuisance set up in their petition that they were desirous of respecting the law, anxious to protect their property, asserting that they were innocent of any wrong doing and that they wished that the lease of the present tenant be terminated if he, the tenant, had violated any law, for if such was the case it was done without their knowledge. The court said that if these facts were established it would appeal favorably to a court of equity. The court might not conclude to dispose the landlord if it appeared that he was innocent of the use to which his property was being put by the tenant and manifested a desire to co-operate in abating the nuisance.

Grossman v. United States, 280 Fed., 683.

Where a tenant has been arrested for violation of the law as regards National Prohibition Act and proceedings commenced to abate a nuisance. The landlord cannot

set up a defense of innocence if he has reasonable grounds to suspicion as to the use his property is being put to. His attitude toward the tenant after being informed of the latter's misconduct might be determinative of his mind.

Grossman v. United States, 280 Fed., 683.

323. Sale:—

Single sale of liquor where it is established that there was other liquor in possession of the defendant is sufficient to constitute a nuisance.

United States v. Eilert Brewing and Beverage Co.,
278 Fed., 659.

There can be an almost irrefutable conclusion drawn from a single sale of intoxicating liquor provided the facts surrounding such sale warrant the inference that it was one of the ordinary and usual incidents of the business then being conducted.

Lewinsohn v. United States, 278 Fed., 421.

Section 21 of the National Prohibition Act, Title II, which defines a nuisance, applies to the keeping of liquor only when it is kept for sale, barter or commercial purposes.

Street v. Lincoln Safe Deposit Co., 254 U. S., 88. (41 S. Ct., 31.)

A single sale of intoxicating liquor does not constitute nuisance.

United States v. Cohen, 268 Fed., 420.

It is not the crime of selling liquor or selling the single drink or liquor by a given person at a given place which constitutes a nuisance. It is the maintenance and use of the room, house or place as a situs for the doing thereof of unlawful or criminal acts which constitutes a nuisance.

United States v. Cohen, 268 Fed., 420.

It is not necessary to prove actual knowledge of sale on the part of the owner if there is sufficient evidence to show that the defendant maintained a nuisance contrary to the National Prohibition Act.

Wiggins v. United States, 272 Fed., 41.

324. Sufficiency of Affidavits:—

Affidavits which are insufficient to authorize temporary injunction to abate a nuisance do not require dismissal of bill.

United States v. Cohen, 268 Fed., 420.

325. Sufficiency of Evidence:—

Evidence held sufficient to convict of maintaining a nuisance.

Young v. United States, 272 Fed., 967;

United States v. Shott, 265 Fed., 429.

OFFICERS.**326. Arrest Without Warrant:—**

Rule as to when officer may arrest without warrant.

Castel v. Lewis, 254 Fed., 917.

327. Federal Officers Restrained by State Authorities:—

Federal court has jurisdiction to inquire into detention of federal officers by state authorities.

Ex Parte Ramsey, 265 Fed., 950;

Ex Parte Shears, 265 Fed., 959.

328. Officers Not Immune from Arrest:—

No official gains any immunity from ordinary legal process by virtue of his office. When he steps outside his powers he becomes subject to the usual remedies.

In Re: Wenistein, 271 Fed., at page 6.

329. Powers of Federal Officers Limited to Federal Violation:—

Federal officers and courts have no power or jurisdiction to arrest, try or punish a citizen unless the act with which he is charged violates a federal statute.

Ex Parte Harvell, 267 Fed., 997.

330. Prohibition Agents Not Officers of the Court:—

Prohibition agents are not officers of the court, consequently court cannot in a summary proceeding order agent to return automobile seized.

Lewis v. McCarthy et. al., 274 Fed., 496;

Chin K. Shue, 198 Fed., 282;

United States v. Hee, 219 Fed., 1019.

OPINION.

331. Expert May Give Opinion as to Alcoholic Content of Liquor:—

An admitted expert on whiskey declared a certain liquor to be whiskey after drinking it. It was held that this was not insufficient in law notwithstanding the fact that no analysis had been made. Whiskey being a well known liquor of high alcoholic content. When the word is used in the act it has a very definite and specific meaning.

Singer v. United States, 278 Fed., 415.

One who has drunk whiskey is familiar with its taste and smell may give an opinion as to whether the beverage sold and drunk was whiskey if it appears that whiskey had been sold. It would require no stretch of the law of judicial notice to conclude that whiskey contains more than one-half of one per cent of alcohol per volume.

Lewinsohn v. United States, 278 Fed., 421;

Pennacchio v. United States, 263 Fed., 66;

Ruppert v. Caffey, 251 U. S., 264;

Purity Extract Co. v. Lynch, 226 U. S., 192;

Rose v. United States, 274 Fed., 245;

Heitler v. United States, 280 Fed., 703.

The same rule applies to wine, but court should exercise more care on the question of alcoholic content of beer.

Lewinsohn v. United States, 278 Fed., 421 at page 426.

Contra: The opinion of federal prohibition agents as to the alcoholic contents of a liquid by drinking it, affords no basis for conviction as it was shown they were not chemists and attempted no analysis, their judgment being merely the opinion of unqualified witness.

Berry et. al. v. United States, 275 Fed., 680.

PENALTIES.

332. Collection of Penalty May Be Enjoined:—

Congress did not intend the process of distraint to be used for the collection of penalties imposed by Section 35 of the National Prohibition Act, therefore, an injunction may issue notwithstanding Section 3224 R. S.

Connelly v. Tarchner, 272 Fed., 911;
 Ledbetter v. Baily, 274 Fed., 375;
 Thome v. Lynch, 269 Fed., 995;
 Kausch v. Moore, 268 Fed., 668;
 Accords v. Fontenot, 269 Fed., 447.

Contra :

Kelly v. Lewellyn, 274 Fed., 108;
 Ketterer v. Lederer, 269 Fed., 153.

333. Enforcement of Penalties as a Tax:—

The Court will not conclude in the absence of language admitting of no other construction that Congress intended that penalties for crime should be enforced through the secret findings and summary action of executive officers. The guaranties of due process of law and trial by jury are not to be forgotten or disregarded.

Likpe v. Lederer, (42 S. Ct., 551).
 Fontenot v. Accrodo, 278 Fed., 871.

334. Imprisonment Under Section 29:—

A defendant is subject to imprisonment under Section 29 of the National Prohibition Act.

Dusold v. United States, 270 Fed., 574.

Imprisonment is not authorized under Title II, Section 25-29, National Prohibition Act for first offense of possession.

Torrey v. United States, 278 Fed., 177.

335. Oppressive.—

Act Ky. March 12th, 1920 provides a penalty of \$500 to \$1000 a day for nonpayment of tax held oppressive.

J. & A. Freiborg Co. v. Dawson et. al., 274 Fed., 420.

336. Repeal Where Punishment is Less.—

The rule of repeal by implication applies where a later statute imposes a less punishment than a former statute for the same offense.

United States v. Stafoff, 268 Fed., 41;
 United States v. Puhac, 268 Fed., 392.

337. Restraining Revenue Officers from Collecting Tax:—

On the question of the right of the revenue department to collect a tax for manufacturing, etc., intoxicating liquor in addition to penalty exacted if defendant is found guilty of violating the National Prohibition Act, see:

Likpe v. Lederer, (42 S. Ct., 551).

338. Tax and penalty Distinguished:—

Although a penalty may be designated as a tax this would not prevent an injunction to restrain the assessment or collection of the "tax" as revised statute 3224 would not apply.

Likpe v. Lederer, (42 S. Ct., 551).

PERMITS.**339. Burden on Defendant to Show Permit:—**

Government does not have to prove in a prosecution for transportation want of permit, unless defendant introduced proof that tended to show that transporting was done under a permit.

United States v. Turner, 266 Fed., 248.

340. Director Has no Power to Revoke:—

Federal prohibition director has no authority to revoke permits.

Bay Street Wholesale Drug Co. v. Potter, 277 Fed., 529.

341. Holding Liquor Under Permit:—

Where a drug company has permit to keep and sell intoxicating liquors for lawful purposes the liquors cannot be seized under a search warrant which has been issued on an affidavit charging an unlawful sale on the premises.

In Re: Alpern, 280 Fed., 432.

Permits which are not in compliance with the statutory requirements is no protection to one possessing liquor unlawfully.

United States v. Masters, 267 Fed., 581.

342. Necessary Parties to Bill Reviewing Acts of Commissioner:—

Commissioner of internal revenue and federal prohibition commissioner are necessary parties to a bill to review the action of commissioner in revoking permits.

Bay Street Wholesale Drug Co. v. Potter, 277 Fed., 529.

The local prohibition director is the only party to proceedings commenced for the purpose of securing permit when one has previously been refused.

Lacks v. Mitchell, Federal Prohibition Director, 278 Fed., 393.

343. Section V and IX of Title II:—

Sections 5 and 9 of Title II of the act have reference to the commissioner of internal revenue, regulations 60, Section 16, delegates this power to the federal prohibition commissioner.

Bay Street Wholesale Drug Co. v. Potter, 277 Fed., 529.

POLICE POWER.**344. Powers Not Delegated:—**

Police power has not been delegated by the states to the federal government.

Peil Bros. v. Day, 278 Fed., 225;

Prigg v. Pennsylvania, 41 U. S., 539. (See page 625.)

POSSESSION.**345. Burden on Defendant:—**

The burden of proof as to possession being legal and not in violation of the law is upon the defendant.

Dillon v. United States, 279 Fed., 639.

346. Circumstantial Evidences:—

Intoxicating liquor was stored in the cellar vault of a hotel, the location, attending circumstances and character of the place raised the presumption that it was kept there in violation of the act.

United States v. Masters, 267 Fed., 581.

The unexplained possession of a large quantity of liquor in course of transportation in a state in which it could not have been lawfully purchased and near to the boundary line of a state in which such purchase was lawful, constitutes evidence sufficient to go to the jury.

Knowlton v. United States, 269 Fed., 386;

Laughter v. United States, 259 Fed., 94;

Berryman v. United States, 259 Fed., 208;

Lindsey v. United States, 264 Fed., 94.

347. Dwelling House:—

Possession of intoxicating liquor in a dwelling house by one not using the dwelling house for any other purpose than a dwelling is lawful.

United States v. Crossen, 264 Fed., 459.

If all of a building or the part exclusively occupied by a person is used for dwelling purposes only, then possession is not unlawful although other persons may conduct store, saloon or shop in another part of the building.

Rose v. United States, 274 Fed., 245.

(See opinion page 249.)

United States v. Crossen, 264 Fed., 459.

348. Evidence Held Sufficient:—

Evidence held sufficient to convict of possession.

Rose v. United States, 274 Fed., 245.

Possession of liquor purchased in February, 1919, and not kept in defendant's dwelling house when act went into effect and not reported within ten days thereof was held to be unlawful possession.

Fitzgough v. Mitchell, United States Prohibition Director, 277 Fed., 966.

349. Facts Not Constituting "Possession":—

Section 3, Title II, of the National Prohibition Act, which provides that no person shall, after the date when the eighteenth amendment goes into effect, manufacture, sell, barter, etc., deliver, furnish or possess any intoxicating liquor does not apply to a warehouse man who has leased a room to an owner of liquor who stored some of it there. There was no "possession" in the warehouse man nor does he "deliver" by permitting the owner to take it from the warehouse.

Street v. Lincoln Safe Deposit Co., 254 U. S., 88. (41 S. Ct., 31.)

350. Indictment Held Sufficient:—

Indictment charged unlawful possession of liquor. Held sufficient.

United States v. Everson, 280 Fed., 126.

351. Mash:—

It was held that the possession of mash under the circumstances in this case did not sustain a conviction.

Hunter v. United States, 279 Fed., 567.

352. On Train Passing Through State:—

Defendant was charged with transporting liquor into the state contrary to the Reed amendment. The only evi-

dence produced at the trial showed that liquor was found in possession of a Pullman car porter and that his run as such porter extended through the state. It was held insufficient to warrant a conclusion that the liquor was for points within the state.

Preyer v. United States, 269 Fed., 381.

353. Penalty for Possession:—

Title II, Section 3, National Prohibition Act prescribes no penalty for unlawful possession. Penalty for such violation being imposed under Section 29 of same act.

Page et. al. v. United States, 278 Fed., 41.

354. Permits:—

Permits which are not in compliance with the statutory requirements is no protection to one possessing liquors illegally.

United States v. Masters, 267 Fed., 581.

355. Possession as Distinguished:—

Possession of liquor in a home for personal use which is permitted by the act is a different possession from that which is made prima facie evidence of intent to sell. There is nothing in the two provisions, one providing for the possession in the home, the other providing that possession of liquor shall be prima facie evidence that it is being kept for the purpose of being sold, which authorizes possession outside of the home for personal use.

Street v. Lincoln Safe Deposit Co., 267 Fed., 706.

356. Possession Not an Offense:—

Possession of liquor alone does not constitute an offense.

United States v. Dowling, 278 Fed., 630;

United States v. Jin Fuey Moy, 241 U. S., 394.

357. Possession Prior to Sale:—

Defendant was charged with carrying on business as a retail liquor dealer illegally. Witnesses testified that they had made purchases from the defendant of intoxicating liquors. It was held competent to show possession of liquor prior to such sales.

Hunter v. United States, 264 Fed., 831.

358. Power of State to Prohibit:—

The state which has enacted prohibitory law may forbid the mere possession of liquor within its border.

Crane v. Campbell, 245 U. S., 304;

Barbour v. State of Georgia, (39 S. Ct., 316.)

359. Section 25, Title II, Does Not Refer to Lawful Possession:—

Title II, Section 25, of the National Prohibition Act which makes it unlawful to possess liquors applies only to liquor to be used in violating the act and does not refer to lawful possession.

Street v. Lincoln Safe Deposit Co., 254 U. S., 88. (41 S. Ct., 31.)

360. Warehouse:—

The fact that possession of liquor is permitted in homes for personal use does not in any way recognize lawful possession outside of home by those not having permits, so that an owner of liquor for personal use might keep it in a storage warehouse.

Street v. Lincoln Safe Deposit Co., 267 Fed., 706.

POWERS OF CONGRESS.**361. No Intention of Volstead Act to Confiscate:—**

Title II of the Volstead Act was passed under a grant of power to enforce the first section of the eighteenth amendment to the Constitution of the United States, which prohibits the manufacture, sale and transportation of intoxicating liquor for beverage purposes, but does not indicate any purpose to confiscate liquor lawfully owned at the time the amendment should become effective and which the owner intended to use in a lawful manner.

Street v. Lincoln Safe Deposit Co., 254 U. S., 88. (41 S. Ct., 31.)

362. Power to Execute:—

Congress has power to provide means for carrying into effect a constitutional provision.

Page et. al. v. United States, 278 Fed., 41;

Rose v. United States, 274 Fed., 245.

363. Prohibition of Beer no Abuse of Power:—

Congress did not abuse the power to enforce prohibition by enacting Willis-Campbell Act, which prohibited the use of beer as a medicine.

Piel Bros. v. Day, 278 Fed., 225;

Falstaff Corporation v. Allen, 278 Fed., 643.

364. Right to Prohibit Unreasonable Searches:—

Congress has the authority to pass an act prohibiting searches which are unreasonable.

United States v. Bateman, 278 Fed., 231.

PRESUMPTION.**365. A Natural Presumption:—**

It is presumed when one orders whiskey that he gets what he orders.

Lewinsohn v. United States, 278 Fed., 421.

366. Evidence Before Grand Jury Presumed Proper:—

There is a presumption which, however, may be overcome, that legal and proper evidence was presented before the grand jury for their consideration.

United States v. Coyle, 229 Fed., 256.

367. Failure to Call Material Witness:—

If a party fails to call witness who is familiar with the facts it is presumed his failure to do so was because the evidence of the witness would be adverse to his interests.

United States v. Hill, 217 Fed., 841.

368. Ignorance of the Law:—

Although knowledge of the law is presumed, this does not necessarily apply to repealed or void statutes.

King Tonopah Mining Co. v. Lynch, 232 Fed., 485.

369. Indictment:—

Indictment no evidence of guilt.

United States v. Richards, 149 Fed., 443.

370. Innocence:—

Defendant is presumed to be innocent until proven guilty beyond a reasonable doubt.

Wright v. United States, 227 Fed., 855;

Shepherd v. United States, 236 Fed., 73.

Wolf v. United States, 238 Fed., 902.

371. Presumption Upon Presumption:—

A presumption cannot be based upon another presumption.
Smith v. Pennsylvania R. Co., 239 Fed., 103.

A presumption of one fact from evidence of another does not constitute a denial of due process of law or a denial of equal protection of law if it appears that there was some casual connection between the fact proved and the ultimate fact presumed, and if the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.

Charlie Toy v. United States, 266 Fed. at page 329.

372. Suppression of Evidence:—

If evidence is suppressed it is presumed party suppressing same had his own interests in mind in so doing, and that such evidence if submitted would be adverse to the party suppressing it.

Backus v. Owe Sam Goon, 235 Fed., 847.

PURCHASER.**373. Act as Effecting Purchaser:—**

It is a crime to sell liquor in violation of the act, but purchaser commits no offense unless perhaps it would be for a conspiracy to violate the law.

Singer v. United States, 278 Fed., 419.

374. Undisclosed Intent:—

There is no violation of the act where defendant made a lawful purchase of liquor even though it was shown afterwards that there was an undisclosed intent to transport it to another state in violation of the act.

Collins v. United States, 263 Fed., 657.

REGULATIONS.**375. As to Powers Given in Act to Make Regulations:—**

Nothing is better settled than that in the construction of a law its meaning must first be sought in the language employed, if that be plain it is the duty of the court to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it.

United States v. Standard Brewery Co., 251 U. S., 217;

Lake County v. Rollins, 130 U. S., 662-670-671;

Bate Refrigerator Co. v. Sulzberger, 157 U. S., 1-33,
 United States v. Bank, 234 U. S., 245-258;
 Caminetti v. United States, 242 U. S., 470-485;
 United States v. George, 228 U. S., 14-22;
 Waite v. Macy, 246 U. S. 606-6-8-609.

376. By Commissioner of Internal Revenue:—

Regulations by the commissioner of internal revenue under the National Prohibition Act held invalid.

Oertel Co. v. Gregory, District Attorney, et al., 270 Fed., 789.

377. Regulations Not to Enlarge Measure of Act:—

Internal revenue officers have no authority under the act to determine the question as to the amount of alcoholic content considered to be intoxicating. While entitled to respect, decisions of the internal revenue department cannot enlarge the meaning of the statute enacted by Congress. Administrative rules cannot add to the terms of an act of congress and make conduct criminal which such laws leave untouched.

United States v. Standard Brewing Co., 251 U. S., 210. (40 S. Ct., 139);

Waite v. Macy, 246 U. S., 606. (38 S. Ct., 395);

United States v. George, 228 U. S., 14, 25. (33 S. Ct., 412);

United States v. United Vende Cooper Co., 196 U. S., 207, 215. (25 S. Ct., 222).

REMOVAL OF LIQUOR.

378. Removal of Liquor from Bonded and Private Warehouses:—

Liquor cannot be removed from bonded warehouse for beverage purposes. This does not apply to owner having liquor in private warehouse.

Lacks v. Mitchell, Federal Prohibition Director, 278 Fed., 3931;

Cornell v. Moore, 267 Fed., 456.

379. Removal of Liquor from Warehouse Without Payment of Tax:—

Failure to pay the tax on the liquor before removing it from the bonded warehouse or removing it during the absence of the storekeeper or without his knowledge,

which are denounced by the earlier act are a different class of offenses from those of transporting liquor without a permit or without complying with the other requirements of the enforcement act relative to transportation and a conviction or acquittal of any or all of one class would not exempt the defendant from prosecution or conviction of any or all of the other class.

United States v. Fredericks, 273 Fed., 188.

REPEAL OF FORMER STATUTES.

380. Alaska Law:—

The "Alaska bone dry law" act of February 14th, 1917, is not repealed by the National Prohibition Act.

Abbate v. United States, 270 Fed., 735.

381. General Rule:—

The general rule for the construction of statutes is that, when a later statute is enacted inconsistent with a preceding statute and covering the entire ground of the subject matter, it supersedes and impliedly repeals the preceding statute. Especially is this the case when the later statute imposes penalties of less severity for the same offenses.

United States v. Windham, 264 Fed., 376.

Before a statute can be repealed by implication it must be impossible to execute both laws.

Reo Atlanta Co. v. Stearns, 279 Fed., 422.

382. Not Repealed if Consistent:—

The Volstead Act, Title II, paragraph 35, providing that statutory provisions of the act not inconsistent with it are not repealed is but declaratory of the general law concerning repeals.

United States v. Stafoff, 268 Fed., 417.

383. Not Subject to Tax and Fine Both:—

One who has been convicted and fined for the sale of liquor under the National Prohibition Act cannot also be subjected to penalties for failure to pay a tax under the internal revenue laws.

Ravitz v. Hamilton, 272 Fed., 721;

Reed v. Thurmond, 269 Fed., 252;

Farley v. United States, 269 Fed., 721;
 United States v. Yuginni, 266 Fed., 746;
 Thome v. Lynch, 269 Fed., 995;
 Kusch v. Moore, 268 Fed., 668;
 Accardo v. Fontenot, 269 Fed., 447;
 Ketchum v. United States, 270 Fed., 416;
 Violette v. Walsh, 272 Fed., 1014.

384. Repeal and Suspension Distinguished:—

The repeal and the suspension of statutes are distinct matters. The suspension of a statute is limited in time, and is not a repeal, which is unlimited in time. The suspension of a statute, like its repeal, may be expressed, as when declared in direct terms, or implied, when it is inferred from subsequent repugnant legislation. But suspension and repeal alike, when not expressed, but only implied, must be inferred from necessity. There must be such a conflict between the old and the new statutes that the two cannot stand together. The intention to suspend or repeal will not be presumed unless the inconsistency is unavoidable and only to the extent of the repugnance.

Maresca et. al. v. United States, 277 Fed., 727.

Prohibition Act repealed Revised Statute 3082 as applied to intoxicating liquor.

United States v. Dowling, 278 Fed., 630.

385. Revenue Laws Not Repealed:—

The National Prohibition Act did not impliedly repeal the internal revenue laws as relating to distilling liquors.

Howard v. United States, 271 Fed., 301.

386. Rev. Stat. 3258, 3279, 3281:—

Rev. Stat. 3258, 3279, 3281 (Comp. St. 5994, 6019, 6021) which were enacted for the purpose of collecting internal revenue on the manufacture of intoxicating liquor and imposing fines for transportation where the tax had not been paid were impliedly repealed by the prohibition act of October 28th, 1919.

United States v. Windham, 264 Fed., 376.

Prohibition act of October 28th, 1919, provides a complete plan for the regulation of alcohol and its manu-

facture, consequently Rev. Stat. 3258, 3279, 3281 (Comp. St. 5994, 6019, 6021) cannot be construed as continuing in force as to alcohol manufactured and transported for industrial purposes.

United States v. Windham, 264 Fed., 376.

Rev. Stat. 3258, 3282 repealed by Volstead Act.

United States v. Stafoff, 268 Fed., 417.

Rev. Stat. 3258 (Comp. St. 5994) which fixes penalty for possession of unregistered stills, and section 3882, which provides a penalty for making liquor in any other place than an authorized distillery, is not repealed by the Volstead Act.

United States v. DeLarge, 269 Fed., 820.

The punishment is greater under section 3258 and 3282, Rev. Stat., than is prescribed in the Volstead Act, but it is not a punishment for the same offense because the mere unlawful possession is punished under the Volstead Act, while there must be a distilling apparatus set up and also unregistered or a mash, wort, or wash fit for distillation, and also on premises other than an authorized distillery to constitute an offense under the sections of the Revised Statutes cited. Separate acts, though part of a continuous transaction, may be made separate crimes by the law making power, as in the case of one who unlawfully breaks and enters a building with intent to steal and thereupon does steal while so within the building.

Morgan v. Devine, 237 U. S., 632, 638, 640; 35 Sup. Ct., 712, 59 L. Ed., 1153;

Ebeling v. Morgan, 237 U. S., 625, 630; 35 Sup. Ct., 719, 59 L. Ed., 1151;

Morris v. United States, 229 Fed., 516, 521, 143 C. C. A., 584;

Morgan v. Sylvester, 231 Fed., 886, 888, 146 C. C. A., 189.

Revised Stat. 3296 is not repealed by the National Prohibition Act.

United States v. Turnerm, 266 Fed., 248.

The Volstead Act embraces the entire subject matter of section 3296, which impliedly repeals that section.

Reed v. Thurmond, 269 Fed., 252;

United States v. Windham, 264 Fed., 276;

United States v. Yuginni, 266 Fed., 746.

387. Sections of Rev. Stat. Repealed and Not Repealed by Act:—

Sections 3257, 3259, 3281, 3282, Rev. Stat., are repealed.
United States v. Yuginovich, 256 U. S. (41 S. Ct., 551).

Sections 3258, 3281, 3286, Rev. Stat., held not repealed.
Ex parte Lawrence, 273 Fed., 876.

Sections 3242, 3257, 3258, 3260, 3279, Rev. Stat., held not repealed.
Ketchum v. United States, 270 Fed., 416.

Sections 923, 3062, Rev. Stat., held repealed.
One Hudson Touring Car, 274 Fed., 473.

Section 3244, Rev. Stat., held repealed.
Ravitz v. Hamilton, 272 Fed., 721.

Sections 3258, 3282, Rev. Stat., held repealed.
United States v. Stafoff, 268 Fed., 417.

Sections 3258, 3279, 3281, Rev. Stat., held repealed.
Sanford v. United States, 274 Fed., 369.

Section 3450, Rev. Stat., repealed in so far as relates to forfeiture of vehicles.
United States v. One Haynes Automobile, 274 Fed., 926.

Sections 3258, 3260, 3279, Rev. Stat., held not repealed.
United States v. Sacein Rouhana Farhat, 269 Fed., 33.

Section 3296, Rev. Stat., not repealed.
United States v. Freidericks, 273 Fed., 188.

Section 3250, Rev. Stat., held not repealed.
United States v. One Cole Aero Eight Automobile, 273 Fed., 934.

Section 3251, Rev. Stat., held not repealed.
Violette v. Walsh, 272 Fed., 1014.

Sections 3258, 3281, 3282, Rev. Stat., held not repealed.
United States v. Phillips, 270 Fed., 281.

Sections 3258, 3282, Rev. Stat., held not repealed.
United States v. DeLarge, 269 Fed., 320.

Section 3296, Rev. Stat., held not repealed.
United States v. Turner, 266 Fed., 248.

388. Section 15 of the Lever Act:—

War Prohibition Act superseded or repealed section 15 of Lever Act. The rule is well settled that where statute prohibited certain act and imposes a penalty for violating it and a subsequent act imposes a different penalty for the same offense, the latter act by substitution repeals the former.

Maresca et al. v. United States, 277 Fed., 727.

389. Section 3450:—

Section 3450 cannot be repealed by the Volstead Act because it governs the whole sale of articles taxed by United States. Its application to intoxicating liquors alone can be affected by the Volstead Act.

Reo Atlanta Co. v. Stearns, 279 Fed., 422.

Section 26 of the National Prohibition Act, which provides for a forfeiture of vehicles used in transporting liquor illegally relates only to transportation, consequently does not repeal Revised Statute 3450, which provides for a forfeiture of a vehicle not only used in transporting but in concealing or depositing liquors on which the tax has not been paid.

Reo Atlanta Co. v. Stearns, 279 Fed., 422;

United States v. One Buick Roadster, 280 Fed., 517.

390. Special Statutes Remain in Force as Exceptions to General Statutes:—

Where there are two statutes upon the same subject the earlier being special and the latter general, the presumption is that in the absence of an expressed repeal or an absolute incompatibility that the special is intended to remain in force as an exception to the general.

Abbate v. United States, 270 Fed., 737;

Washington v. Miller, 235 U. S., 422;

Ex parte United States, 226 U. S., 420;

Petri v. Creelman Lumber Co., 199 U. S., 487.

391. Violation Before Act Became Effective:—

Violation of revenue laws before act went into effect would be punishable by the law in effect at time of violation.

Alexander v. Thurmond, 272 Fed., 474.

392. War Prohibition Act Not Repealed:—

War Prohibition Act of November 21st, 1918, not repealed
by Volstead Act of October 28th, 1919.

Maresca et al. v. United States, 277 Fed., 727;

Vincenta v. United States, 272 Fed., 114;

Ford v. United States, 269 Fed., 609.

RETURN OF PROPERTY.**393. Bond Under Section 26:—**

By the provisions of section 26, National Prohibition Act,
a vehicle after seizure may be instantly returned to the
owner upon execution by him of a bond to produce the
property at the criminal trial.

United States v. Hydes, 267 Fed., at page 471;

United States v. Graham, 267 Fed., 472.

394. Equity Will Not Aid Return:—

Liquor cannot be taken from bonded warehouse by aid of
equity.

Fitzbaugh v. Mitchell, U. S. Prohibition Director, 277
Fed., 966.

395. Failure to Allege Ownership:—

Where property was seized without a search warrant it
will not be returned where claimant fails to allege
ownership.

O'Connor v. Potter et al., 276 Fed., 32.

396. Liquor Not Returned:—

Illicit liquor seized under a search warrant that was
invalid need not be returned.

United States v. Alexander, 278 Fed., 308.

397. No Power to Order Return in Summary Proceedings:—

The court has no power in summary proceedings to order
the return of an automobile seized while being used
for transportation of liquor. Prohibition agents not
being officers of the court, they cannot be ordered by
the court in these proceedings to return vehicle.

Lewis v. McCarthy, 274 Fed., 496.

398. No Right of Property:—

No one can have any right of property in contraband
liquor or any right to transport it.

Elrod v. Moss, 278 Fed., 129.

399. Power of Commissioner:—

Commissioner cannot order return of liquor seized.

Biliganis v. Mitchell, 279 Fed., 131;

In Re: Alpern, 280 Fed., 432.

400. Return of Still:—

Owner held not entitled to return of still.

In Re: Mobile, 278 Fed., 949.

Petitioner held to have no right to return of still found on premises, even though it was not mentioned in the search warrant.

United States v. Camarota, 278 Fed., 388.

401. Rights of Conditional Vendor or Mortgagee:—

A conditional vendor or a mortgagee who allows a vehicle to be used for unlawful purposes with his knowledge or who gives his consent to illicit transportation shall forfeit all interest in or his lien upon the vehicle.

United States v. Sylvester, 273 Fed., at page 257.

A bona fide vendor or mortgagee, without having any notice that vehicle was being used or was to be used for illegal purposes shall be protected to the amount of his bona fide lien in so far as possible.

United States v. Sylvester, 273 Fed., at page 257.

402. Rights of Lienor:—

If a lienor has no knowledge as to the purpose for which vehicle was being used upon which he has his lien and there are no facts which would warrant his suspicions being aroused, then in that event, in case of seizure the vehicle shall be sold at public auction and after the costs as provided by law have been paid, the United States marshal shall then pay, if possible, the amount of the bona fide lien in full to the proper person and the balance, if any, shall be turned into the treasury of the United States. If, however, the lienor had knowledge of the illegal use of the vehicle or could be charged with such knowledge, then the proceeds of the sale of said vehicle shall be turned into the treasury of the United States after the payment of such costs as are provided by law.

United States v. Sylvester, 273 Fed., at page 257.

Cases may arise where the application of this rule would result in realizing an insufficient amount at the sale to pay the full amount of the bona fide lien, but where a substantial amount has already been paid, as here, on a new truck, undoubtedly the full amount of the balance due, plus the costs, will be realized so that the lienor will be fully protected. Where, however, the amount paid by the purchaser is small in proportion to the purchased price, so that a large amount will have to be realized by the United States marshal at the sale and where the highest bid is insufficient to meet the costs and the amount of the bona fide lien, United States marshal shall then abandon the sale, report the facts to the court for further instructions. In such event a further hearing will be had before the court to determine then whether the lienor has shown good cause why the vehicle should not be sold.

United States v. Sylvester, 273 Fed., at page 257.

403. Rights of Owner Having Loaned Vehicle:—

The owner of a vehicle who loaned it to another, who in turn transports intoxicating liquor therein is entitled to a return of the vehicle, where he has no knowledge of the purpose of the borrower and no facts are shown which should have aroused his suspicion.

United States v. Sylvester, 273 Fed., at page 257.

404. Sale, Only After Conviction:—

If the person is convicted, and only then may the court destroy the liquor and order the sale of the vehicle, at the same time hearing any claimant or lienor as to his or her rights therein.

Reo Atlanta Co. v. Stearns, 279 Fed., 422, at page 424.

405. Seizure Without Process:—

The auto and whiskey, by virtue of the National Prohibition Act, were forfeited and thereby transferred to the United States the moment defendant embarked upon the unlawful transportation. The United States was then vested with the right of property and possession. Even as any other owner of property in like circumstances at common law, United States without process

could recover possession by force and however, if at all irregularly the officers proceeded, the defendants have no right to the return of the property nor to object to its use in evidence whatever other if any right or remedy they may have.

United States v. Fenton, 268 Fed., 221.

406. Use of Vehicle Without Owner's Knowledge:—

Where ownership and want of knowledge on the part of the vehicle owner as to the purpose for which the vehicle was employed it was held that without any other attending circumstances this was sufficient to warrant the court to order its return to the owner.

United States v. Brockley, 266 Fed., 1001.

Contra: Lewis v. McCarthy, 274 Fed., 496.

SALE.

407. Indictment Charging Sale Held Good:—

Indictment charged sale of intoxicating liquor for beverage purposes held sufficient.

Heitler v. United States, 280 Fed., 703.

408. Inference from Single Sale:—

There can be an almost irrefutable conclusion drawn from a single sale of intoxicating liquor, provided the facts surrounding such sale warrant the inference that it was one of the ordinary and usual incidents of the business then being conducted.

Lewinsohn v. United States, 278 Fed., 421.

409. Ignorance as to Alcoholic Content No Defense:—

Ignorance of the fact that products sold contained more than the lawful percentage of alcohol is not a defense as intent is not an element of illegal sale.

United States v. Mathie, 274 Fed., 225.

410. Sale Held Not Entrapment:—

Sale to officers asking for cough syrup does not constitute entrapment.

Farley v. United States, 269 Fed., 721.

411. Sale to Agents:—

Proof was limited to the fact that sale was made to government agents. This circumstance held not to preclude a conviction.

Saucedo v. United States, 268 Fed., 830.

412. Title II, Sections 3, 6, 11:—

Title II, sections 3, 6 and 11, of the National Prohibition Act, does not authorize a jobber to withdraw whiskey from bond for sale to a druggist. Act applies only to manufacturers and wholesale druggists.

Small Grain Distilling and Drug Co. v. Hamilton,
Collector of Internal Revenue, et al., 276 Fed., 544.

SEARCH AND SEIZURE.**413. Amend in Term:—**

The court has authority to amend or vacate order during the term order was entered, providing for the sale of an automobile seized for transporting liquor.

United States v. Brockley, 266 Fed., 1001.

414. Chattel Mortgage on Car Seized:—

Where an automobile was seized under Volstead Act, October 28th, 1919, one holding a chattel mortgage on it must establish his claim by competent evidence.

United States v. Masters, 264 Fed., 250.

Where a chattel mortgage on an automobile seized by virtue of the Volstead Act is relied upon to show a lien on said property seized it must bear internal revenue stamps as required by act of February 24th, 1919, to be admissible as evidence in the federal court.

United States v. Masters, 264 Fed., 250.

415. Commissioner No Authority to Return Property:—

Title II, section 25, of the National Prohibition Act, does not give commissioner authority to return goods seized thereunder, as the act provides that property seized shall be subject to such disposition as the court may make thereof.

Francis Drug Co. v. Potter, 275 Fed., 615.

416. Competency or Incompetency of Evidence Seized:—

To settle the question as to what testimony is competent or incompetent in ordering the return of papers illegally seized, some reference will be necessary to a master who will make a record of such character so that the evidence obtained by the improper seizure may be identified. No such evidence or testimony may be given

unless the respondents show before the master that they have independent proof not derived from information contained in the papers. The expenses of this reference will be borne by the prosecution through whose wrong the difficulty arose.

United States v. Kraus, 270 Fed., 578.

The evidence obtained upon an unwarranted search can not be used either to secure the owner's conviction or to forfeit his property if petition for its return is presented to the court before trial.

United States v. Bush, 269 Fed., 455;

United States v. Slusser, 270 Fed., 818;

Boyd v. United States, 116 U. S., 634;

United States v. Brasley, 268 Fed., 59.

The fact that city officers assisted in the search and seizure does not alter result if federal officers participated in and took charge of the property seized.

United States v. Slusser, 270 Fed., 818;

Flagg v. United States, 233 Fed., 481;

Contra :

United States v. O'Dowd, 273 Fed., 600;

Youngblood v. United States, 266 Fed., 795.

A seizure of wine and liquor was made by police officers of a city and not by prohibition agents of the United States, the police officers having been called because of a peace disturbance. The testimony was held to be admissible as well as any whiskey or liquor taken by them without a search warrant, as it was held there had been no violation of defendant's right under constitutional amendment four.

Herine v. United States, 276 Fed., 806.

Prohibition enforcement agents went into a hotel and bar where they found three persons standing before the bar drinking whiskey. The whiskey was seized by the agents. They then asked permission to search the house which was granted by the defendant. As a result of this search there was found several gallons of intoxicating liquor. It was held that this evidence was admissible and that the seizure did not violate the constitutional rights of the defendant.

Dillon v. United States, 279 Fed., 639;

Contra see:

Amos v. United States, 255 U. S., 313.

Golde v. United States, 255 U. S., 298.

Papers may be used in evidence even if seized illegally if government had nothing to do with illegal seizure.

Burdeau v. McDonald, 256 U. S., (41 S. Ct., 574).

For rule on improper seizure as effecting the competency and incompetency of evidence, see

Gould v. United States, 255 U. S., 298;

Haywood v. United States, 268 Fed., 795;

St. John v. United States, 268 Fed., 808;

Weinstein v. Attorney General, 271 Fed., 673;

Amos v. United States, 255 U. S., 313;

United States v. Kraus, 270 Fed., 578;

United States v. Rykowski, 267 Fed., 856;

United States v. Porazzo, 272 Fed., 276.

417. Confiscation and Destruction:—

Constitutional amendment number five does not apply to destruction of whiskey or other intoxicating liquors under the prohibition act of November 21st, 1918. Although the whiskey may have value, it may be destroyed without compensation.

Hannah & Hog v. Clyne, 263 Fed., 599.

418. Definition of "Boat," "Craft," Etc.:—

"Boat," "craft" and "watercraft" has reference to small boats and crafts. It does not mean large steamers. Therefore a steamer of heavy tonnage cannot be seized under the act where some of the crew without the knowledge of the owners have illegally transported liquor thereon.

The Saxon, 269 Fed., 639.

419. Essential Elements for Forfeiture:—

The forfeiture of an automobile under the twenty-sixth section of the Volstead Act must be in strict pursuance to the terms thereof. The following elements are essential:

- (1) That an officer of the law discover some person in the act of illegally transporting liquor in a vehicle.
- (2) The seizure of the liquor so transported or possessed.

- (3) The seizure of the vehicle and arrest of the person.
- (4) That the officer proceed against the person and retain the vehicle, unless redelivered to the owner, upon giving bond to return it to the custody of the officer on the day of trial to abide the judgment of the court.
- (5) Conviction of the person and order of sale of the vehicle.
- (6) Distribution of the proceeds.
United States v. Slusser, 270 Fed., 818;
United States v. Hydes, 267 Fed., 471;
The Goodhope, 268 Fed., 694.

420. Fourth Amendment:—

The fourth amendment to the constitution contains no prohibition against arrest, search and seizure without a warrant, that was left under the common law. The amendment provides not that no arrest, search or seizure should be made without a warrant, but prescribes that there shall be no unreasonable search and seizure.

United States v. Snyder, 278 Fed., 653.

421. Garage:—

The right of the people to be secure in their houses and effects against unreasonable searches and seizures is not limited to dwelling houses, but extends to a garage used personally and for hire.

United States v. Slusser, 270 Fed., 818.

422. Illegally Obtained Information No Basis for Search Warrant:—

If information is secured through the use of an illegal search warrant such information cannot afterwards be used in the securing of a second warrant.

United States v. Mitchell, 274 Fed., 128.

423. Jurisdictional:—

The provision of the National Prohibition Act which provides for a forfeiture of property seized while in violation of the law is a proceeding in rem. The procedure is not merely directory and cumulative, but is jurisdictional.

United States v. Hydes, 267 Fed., 470.

424. Knowledge of Use as Affecting Owner:—

Where it is shown that vehicle was used unlawfully by another without the knowledge or sanction of the owner the court is warranted in ordering its return.

United States v. Brockley, 266 Fed., 1001.

The rule might be otherwise if the reputation of the person entrusted with the vehicle or other circumstances attending his occupation or employment would give rise to an inference that it was to be used for unlawful purposes.

United States v. Brockley, 266 Fed., 1002.

The court under the National Prohibition Act has no authority to return a vehicle to the owner used in illegal transportation unless it can be shown that the owner had no knowledge of its unlawful use.

United States v. Burns, 270 Fed., 681.

425. No Forfeiture if Search Is Unlawful:—

Where there is no evidence to warrant the forfeiture of an automobile seized as the vehicle of unlawful transportation except that obtained upon an unwarranted and unlawful search and seizure the automobile cannot be forfeited.

United States v. Slusser, 270 Fed., 818.

426. One Illegal Sale Did Not Warrant Seizure:—

Where a company had a permit to have liquor in its possession one illegal sale was held insufficient to warrant the seizure of the entire stock of liquor; nor is this view affected by the fact that proceedings were pending under section 9 of the act seeking to revoke the company's permit.

Francis Drug Co. v. Potter, 275 Fed., 615.

427. Order Not Appealable:—

An order for the return of liquor illegally seized is not appealable.

United States v. Marquette, 270 Fed., 214;

Coastwise Lumber and Supply Co. v. United States, 259 Fed., 847;

United States v. Maresca, 266 Fed., 713;

Crooker v. Knudsen, 232 Fed., 857.

428. Order Returning Papers Unlawfully Seized:—

When papers wrongfully seized are ordered to be returned the order will provide that no testimony or other evidence as gathered from such papers shall be competent unless it is shown that such testimony or evidence is secured independently from the papers or instruments unlawfully seized.

United States v. Kraus, 270 Fed., 578.

Documents seized in unlawful searches must be returned and with them all copies taken of them while the documents were being held by the officers illegally, and in addition the prosecution may not use at the trial or in its preparation any information obtained from the scrutiny of such documents illegally obtained.

United States v. Kraus, 270 Fed., 578;

Weeks v. United States, 232 U. S., 383;

Silverthorne Lumber Co. v. United States, 251 U. S., 385;

Flagg v. United States, 233 Fed., 481;

Veeder v. United States, 252 Fed., 414;

United States v. Mills, 185 Fed., 318.

429. Private Dwelling:—

Private dwelling occupied as such may be lawfully searched under a search warrant duly issued upon sufficient information supported by affidavit.

United States v. Crossen, 264 Fed., 461.

Private dwelling is not exempt from search if it is being used for the unlawful sale of intoxicating liquor or if it is in part used for some business purpose.

United States v. Crossen, 264 Fed., 459.

Where a dwelling house is used in part as a saloon the right to search applies only to the husband and not to the wife, whose possession was lawful, and it was shown that she had nothing to do with conducting the saloon.

United States v. Crossen, 264 Fed., 459.

Search of private dwelling may be provided for by state laws.

United States v. Viess, 273 Fed., 279.

If in the attending enforcing of the prohibition law a search warrant is applied for the first inquiry of the

judge or commissioner should be as to the character of the place to be searched. If it be a private dwelling then the inquiry should be what evidence have you that this place is being used for the unlawful sale of intoxicating liquor. If the officer has no such evidence he should not apply for the warrant.

United States v. Mitchell, 274 Fed., 128.

“The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by the oath or information, and particularly describing the place to be searched, the person and things to be searched.” Such is the language of the fourth amendment. The protection thus afforded can only be insured by the courts. Every case arising must, of course, be determined upon the facts of that particular case; and where, as here, the records of an invitation to enter which also shows the presence of shotguns and pistols, I cannot disassociate the one from the other.

As there was no order to either search the premises or seize the liquor, and as the only justification pleaded is that of “invitation to enter and consent to the seizure.”

Under the circumstances recited I am of the opinion that the motion for an order for the return of the property should be granted upon the pleadings.

United States v. Kelih, 272 Fed., 484.

430. Proceeding to Determine Rights:—

An officer seizing liquors under a search warrant must cause appropriate proceedings to be brought to determine whether the liquor is unlawfully possessed or is without property rights under National Prohibition Act, Title II, section 25.

United States v. Crossen, 264 Fed., 459.

431. Prompt Trial:—

The defendant was charged with violation of the Reed amendment. At the time of his arrest intoxicating liquor was seized and possession of same was taken from him. More than a year elapsed after the seizure without

an information or indictment having been returned. It was held that the statute contemplated prompt trial, and in the absence of formal charges being filed the defendant was entitled to a return of his property.

Dorsey v. District of Columbia et al., 265 Fed., 1005.

432. Property Rights:—

Prior to the eighteenth amendment "whiskey" was property and the rights therein were as full and complete as property rights in any other sort of personal property.

Cornell v. Moore, 267 Fed., 456.

433. Question of Improper Seizure One Within Discretion of Court:—

The question as to whether improper seizure has been made which affects the admissibility of that seized as evidence is a question for determination by the trial court.

Hughes v. Falvey, 269 Fed., 865.

434. Reasonable and Unreasonable Searches:—

The officers of the government have authority when they hold a warrant to search, to take a locked safe into their possession for such time as may be necessary to open it, where the defendant locked the safe and refused to open same on demand.

United States v. Metzger, 270 Fed., 291.

Where a party announced himself as a prohibition agent and was given permission to make a search this does not waive defendant's right to constitutional protection from unreasonable search.

United States v. Slusser, 270 Fed., 818;

United States v. Marquette, 271 Fed., 120.

The right of the people to be secure in their houses and effects against unreasonable searches is not limited to dwelling houses, but extends to a garage, store, shop, office, safety deposit vault or even to a corporation.

United States v. Slusser, 270 Fed., 818;

Silverthorne Lumber Co. v. United States, 251 U. S., 385.

An unlawful search cannot be justified by what is found.

A search that is unlawful when it begins is not made

lawful when it ends by the discovery and seizure of liquor.

United States v. Slusser, 270 Fed., 818.

The entry without permission expressed or implied without warrant on a mission of search and seizure by prohibition agents is unlawful.

United States v. Slusser, 270 Fed., 818.

The eighteenth amendment must be considered in determining the question as to what is an unreasonable search.

United States v. Bateman, 278 Fed., 231.

The prohibition of the fourth amendment is against all unreasonable searches and seizures; and if for a government officer to obtain entrance to a man's house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers, would be an unreasonable and therefore a prohibited, search and seizure, as it certainly would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth or by force or coercion. The security and privacy of the home or office and of the papers of the owner would be as much invaded, and the search and seizure would be as much against his will in the one case as in the other; and it must therefore be regarded as equally in violation of his constitutional rights.

Without discussing them, we cannot doubt that such decisions as there are in conflict with this conclusion are unsound, and that, whether entrance to the home or office of a person suspected of crime be obtained by a representative of any branch or subdivision of the government of the United States by stealth, or through social acquaintance, or in the guise of a business call, and whether the owner be present or not when he enters, any search and seizure subsequently and secretly made in his absence falls within the scope of the prohibition of the fourth amendment.

Gould v. United States, 255 U. S., 298.

435. Return of Property:—

Property seized under an invalid search warrant must be returned upon proper showing of fact.

United States v. Ray & Schultz, 275 Fed., 104.

Mere evidence of sale does not give the right to search a private dwelling without a proper search warrant and under such circumstances property seized must be returned and is not admissible in evidence against the owner.

Connelly v. United States, 275 Fed., 509;

Boyd v. United States, 116 U. S., 616;

Weeks v. United States, 232 U. S., 383.

Evidence held insufficient to warrant return of liquor seized.

In Re: A Disposition of Certain Intoxicating Liquors,
275 Fed., 852.

436. Right to Inspect Does Not Give Right to Seize:—

The right to inspect does not give the right to seize.

United States v. Kraus, 270 Fed., 581.

437. Sale—Unless Good Cause Is Shown:—

National Prohibition Act provides that the court shall unless good cause is shown to the contrary, order the sale of property seized under the act. It is within the judicial discretion of the court to determine if good cause is shown.

United States v. Brockley, 266 Fed., 1001.

438. Search While Under Arrest:—

It is entirely proper to examine thoroughly the person and effects of a man in an intoxicated condition who is under arrest because of such condition. The right of an arresting officer to search a defendant under ordinary circumstances when a defendant is under arrest charged with a violation of the law cannot be questioned.

United States v. Murphy, 264 Fed., 842;

Weeks v. United States, 232 U. S., 383;

Welsh v. United States, 267 Fed., 819.

Whiskey taken from a person under arrest for intoxication is not unreasonable searches, consequently is admissible evidence against him.

United States v. Murphy, 264 Fed., 842;

Vouled v. United States, 264 Fed., 839.

Where one was arrested while in violation of the Volstead Act agents had the right to search the person, having

properly arrested him. This is a recognized incident of an arrest.

United States v. Kraus, 260 Fed., 578;
Weeks v. United States, 232 U. S., 392.

439. Steamships Not Subject to Forfeiture:—

Large steamships not subject to forfeiture in sale nor are the owners required to give bond for its release.

The Saxon, 269 Fed., 639.

440. To Determine Right of Seizure:—

Defendant filed a petition for the return of papers which he claimed illegally seized. The respondents answered by stating that the search and seizure was by consent of the defendant. This is an issue which gives the parties right to a trial and it cannot be decided upon affidavits. It may be brought on at the criminal term on any convenient day and be tried before the presiding judge without a jury.

United States v. Kraus, 270 Fed., 578.

441. Time of Seizure:—

Section twenty-six of Title Two of the National Prohibition Act expressly provides that the vehicle shall be taken while in the act of illegal transportation. If the vehicle is not so taken a seizure afterwards would be without warrant of law.

United States v. Hydes, 267 Fed., 470.

One may be convicted of illegal transportation, yet the vehicle will not be forfeited unless seized at the time. The seizing officer is to have the vehicle in possession on the day of the trial of the person arrested to abide the judgment in the same proceeding. Should the defendant be acquitted the automobile must be released, for it is only upon conviction that its sale may be ordered.

United States v. Slusser, 270 Fed., 818;

United States v. Hydes, 267 Fed., 471.

442. Vehicle Seized When Operated Without Consent of Owner:—

Automobile may be subject to seizure, although operated by chauffeur in unlawful transportation without knowledge or consent of owner.

Lewis v. McCarthy et al., 274 Fed., 496;

Grant v. United States, 254 U. S., 505.

443. Violent Seizure:—

The right to seize papers does not justify their violent seizure.

Hale v. Henkel, 201 U. S., 43;

Wilson v. United States, 221 U. S., 361;

United States v. Kraus, 270 Fed., 578.

444. When Papers, Books, Etc., May Be Seized:—

Under section 35, Title II, of the Volstead Act, the regulations of that act are made complementary to the Revised Statutes, of which section 3318 describes that the failure of a wholesale liquor dealer to keep a book showing all sales and purchases of liquor shall constitute a crime. Where the books are not kept as required by this section or insufficiently kept, all documents showing transactions which should be recorded under the law may be seized on search warrants.

United States v. Kraus, 270 Fed., 578.

445. When Papers Were Seized from Person at Time of Arrest:—

Certain papers were taken from the pockets of the defendant by the marshal when the arrest was made. They were afterwards introduced in evidence. The court said it may be that he was entitled to have these papers returned to him, but until he had asked for such return it was not erroneous to receive them in evidence.

Laughter v. United States, 259 Fed., 94.

446. When Seizure May Be Made Without Warrant:—

Officers may make a seizure of liquor without a search warrant where the offense is committed in their presence.

Wiggings v. United States, 272 Fed., 41.

Police officers seized still without search warrant which he saw through open window held to be lawful seizure.

In Re: Mobile, 278 Fed., 949.

In no case is a prohibition officer or agent justified in seizing intoxicating liquor or other property without a search warrant, except as provided in section 26, which makes it his duty to seize all intoxicating liquors found

being transported contrary to law in any wagon, buggy, automobile, water or air craft or other vehicle.

United States v. Crossen, 264 Fed., 459.

SEARCH WARRANT.

447. Absence Will Not Interfere with Search:—

A defendant cannot avoid the effects of a search warrant by absenting himself from the premises to be searched.

United States v. Camarota, 278 Fed., 388.

448. Act of June 15, 1917:—

A search warrant may issue in manner and form as provided by the act of June 15th, 1917, in aid of enforcement of National Prohibition.

Rose v. United States, 274 Fed., 245;

United States v. Friedman, 267 Fed., 856.

449. Affidavit Held Insufficient:—

Prohibition agent made an affidavit stating that he had obtained a sample of liquor from a certain company and that said liquor upon analysis was shown as having more than one-half of one per cent of alcohol by volume. This affidavit was held insufficient by the court as it failed to state by whom the analysis had been made as well as setting forth the testimony of the one making the analysis.

Central Consumers Co. v. James, United States Marshal, 278 Fed., 249.

450. Amendment by Telephone Not Proper:—

Amendment of search warrant by telephone is not sufficient. There must be an amendment of the affidavit upon which search warrant issued.

United States v. Mitchell, 274 Fed., 128.

451. Collateral Inquiry:—

It is established law that a collateral inquiry into the mode in which evidence has been obtained will not be allowed when the question is raised for the first time at the trial.

Wiggins v. United States, 272 Fed., 41;

Silverthorne Lumber Co. v. United States, 251 I. S., 385-392;

Weeks v. United States, 232 U. S., 383-395-396;

Adams v. New York, 192 U. S., 585.

452. Consent by Wife:—

This is the rule even though the wife gave consent to a search unless it is shown that she was the authorized agent of the defendant.

United States v. Rykowski, 267 Fed., 866.

453. Evidence Secured by Illegal Search:—

Evidence obtained by illegal search is not admissible in evidence.

United States v. Rykowski, 267 Fed., 866.

Liquor taken from ice chest without search warrant violates the fourth amendment, therefore, makes such liquor so taken inadmissible in evidence.

Berry et. al. v. United States, 275 Fed., 680.

Testimony of chemist as to analysis of liquor is inadmissible if liquor upon which analysis was made is illegally seized.

Berry et. al. v. United States, 275 Fed., 680;

Dukes v. United States, 275 Fed., 142.

454.—Information and Belief:—

Affidavit based upon information and belief alone is wholly insufficient as a basis for issuing a search warrant.

United States v. Ray & Schultz, 275 Fed., 1004;

Veeder v. United States, 252 Fed., 414;

United States v. Michalski, 265 Fed., 839.

No search warrant shall issue based upon suspicion, belief, rumors or surmises.

United States v. Kelih, 272 Fed., 484;

Veeder v. United States, 252 Fed., 414-418;

United States v. Armstrong, 275 Fed., 506;

(See opinion page 508.)

Ripper v. United States, 178 Fed., 24;

United States v. Kelih, 272 Fed., 484;

United States v. Borowski, 268 Fed., 408;

United States v. Pitotto, 267 Fed., 603.

455. Insufficient Description:—

Search warrant held to be invalid because of insufficient description of place to be searched.

United States v. Alexander, 278 Fed., 308.

456. Less Particularity Required Than in Other Searches:—

Less particularity is required in the search warrant as to the identity of liquor, intoxicating liquor, etc., than is required for the search of other property.

Elrod v. Moss, 278 Fed., 123.

457. Means of Committing Felony:—

It is not necessary in order to have a search warrant under the National Prohibition Act to set out in the affidavit that the property was used as a means of committing a felony.

United States v. Friedman, 267 Fed., 857.

The issuance of a search warrant under the National Prohibition Act is not restricted to cases where property is being used to commit a felony.

United States v. Metzger, 270 Fed., 291.

458. Must Not Change Warrant:—

A search warrant which was changed as to name, date, locality, etc., held invalid.

United States v. Armstrong, 275 Fed., 506.

459. Name of Particular Party Not Necessary:—

It is not necessary that the search warrant name any particular party. It is sufficient if the place is properly described.

United States v. Camarota, 278 Fed., 388;

United States v. Borowski, 268 Fed., 408.

460. Probable Cause:—

An affidavit that affiant has reasons to believe and does believe that an illegal act is being committed under the Prohibition Act on certain premises is insufficient, the affidavit should state facts showing probable cause for the issuance of the search warrant or that the commissioner determine at a hearing whether there is such cause for issuance.

United States v. Rykowski, 267 Fed., 866.

An affidavit by a prohibition agent setting out that the premises were used as a saloon and dwelling and that on a day and at an hour stated that he purchased intoxicating liquor, to-wit, whiskey, containing one-half of one per cent or more of alcohol and the amount paid for

the liquor, these are facts upon which the commissioner should find probable cause for issuing a search warrant.

United States v. Friedman, 267 Fed., 857.

461. Property Description:—

Description of property by a street and number is sufficient as to description.

United States v. Friedman, 267 Fed., 857.

A description in a search warrant of property to be searched is insufficient when said description is confined to certain street and number where there are both a north and south street of that name.

United States v. Rykowski, 267 Fed., 866.

462. Return Not Essential:—

Failure of an officer to make return of search warrant does not invalidate the search or seizure made thereunder, the return being merely a ministerial act which may be performed at a later date.

Rose v. United States, 274 Fed., 245.

463. Return of Property:—

Even though there was a seizure of an illicit still by officers acting under an invalid search warrant, property will not be returned to defendant.

United States v. Rykowski, 267 Fed., 866.

464. Return of Search Warrant:—

The failure to make return of a search warrant is only an irregularity which may be corrected on motion.

United States v. Kraus, 270 Fed., 578.

465. Search at Night:—

To make the search of a residence at night lawful a search warrant must contain directions that it may be served at any time, day or night.

United States v. Rykowski, 267 Fed., 866.

466. Search Warrant Not Necessary:—

Where government officers jumped over a bar and made seizure of whiskey, held search warrant not necessary.

Kathriner et. al. v. United States, 276 Fed., 808.

A search warrant is not needed in a case where officer while searching other premises by the sense of smell came to

the conclusion that someone was making mash in an adjoining building occupied by entirely different parties than those mentioned in the warrant. The court said, "if an officer may arrest when he actually sees the commission of a felony, why not the same if his sense of smell informs him that a crime is being committed."

United States v. Barkowski, 268 Fed., 408.

467. Time of Serving Warrant Question for the Jury:—

A search warrant was secured but not served for thirty days after its issuance. As to whether or not this was a reasonable delay held a question for the jury.

Elrod v. Moss, 278 Fed., 123.

468. Warrant Held Invalid:—

Commissioner issued warrant to search apartment building including entire premises of outhouses, sheds, lockers, safes, closets, attics, basements, etc., without first requiring evidence that premises or part thereof were being used for sale of liquor contrary to the law. Held invalid.

United States v. Mitchell, 274 Fed., 128.

469. Warrant Invalid if Issued Without Oath:—

If a warrant is issued without an oath or affirmation it is void.

United States v. Kelih, 272 Fed., 484.

470. When Automobile May Be Searched Without a Warrant:—

An automobile may be searched without a search warrant and the finding of liquor justifies the search.

United States v. Bateman, 278 Fed., 231;

United States v. Fenton, 268 Fed., 221;

Ex Parte Morrill, 35 Fed., 267;

United States v. Welsh, 247 Fed., 239.

SENTENCE.

471. After Term Judgment Final:—

Judgment cannot be set aside after the term.

United States v. Mayer, 235 U. S., 55.

472. Extent of Punishment Discretionary:—

In imposing sentence trial judge has sole discretion, within

the limits of the statutes fixing the penalty, in determining the amount of punishment to be inflicted.

Maresca et. al. v. United States, 277 Fed., 727.

473. One Judgment on Conviction:—

In a criminal case there can be but one judgment on a conviction.

Freeman v. United States, 227 Fed., 732.

Where several crimes are charged in one indictment or several indictments have been consolidated for the purpose of trial there can be but one judgment and when that judgment is imposed it must in terms specify the order in which the terms of imprisonment are to commence and terminate. Judgment must be certain and definite.

United States v. Patterson, 29 Fed., 775.

474. Sentence for More than one Offense:—

It has been held that a prisoner may not be sentenced for more than one offense unless the different convictions were had at the same term and both were obtained previous to the sentence. In other words, that there is no authority for convicting a prisoner of felony at one term of court and regularly passing sentence upon him and then remanding him to jail until the next succeeding term and again convicting him and sentencing him for another felony.

Ex Parte Lamar, 274 Fed., 175.

475. Sentence Not to be Changed:—

A sentence in a criminal case should not be changed unless prisoner has been notified or consented to the modification.

United States v. Lane, 221 Fed., 299.

476. Single Sentence for Three Offenses:—

A single sentence imposing both fine and imprisonment was held not void because of the fact that the defendant pleaded guilty to an information which charged the manufacture of intoxicating liquor without a permit, failure to keep proper records and possession of property designed to manufacture liquor contrary to law.

Ex Parte Poole, 273 Fed., 623.

477. Suspension of Sentence:—

District court exceeds its authority and power by suspending sentence indefinitely.

Ex Parte United States, 242 U. S., 27.

478. Unauthorized Sentence Need Not Effect all Counts:—

Where court gave sentence under one count which was not authorized it was held not to effect sentence on other counts which were good.

Laurie v. United States, 278 Fed., 934.

479. When Sentence May be Corrected:—

Defendant was released on a writ of habeas corpus because of faulty sentence. It was held that the court might correct sentence after the term had expired.

Bryant v. United States, 214 Fed., 51.

480. When Sentences Run Concurrently:—

Where defendant is already in execution of a former sentence and where the second sentence does not state that the term is to begin at the expiration of the former, the second will run concurrently with the first in the absence of a statute providing a different rule.

Ex Parte Lamar, 274 Fed., at page 176;

Kirkman v. McClaughry, 152 Fed., 255.

STORAGE.

481. Storage for Private Use:—

The Volstead Act does not prohibit the storage of liquor in a warehouse for private use.

Street Lincoln Safe Deposit Co., 254 U. S. 88.

482. When Liquor May be Stored in Warehouse:—

One may store liquor in a warehouse if the liquor is to be used in one's own home under such conditions as are permitted by Section 33, of Title II, of the act.

Street Lincoln Safe Deposit Co., 254 U. S. 88.

SUFFICIENCY OF EVIDENCE TO CONVICT.

483. Confession:—

Corroboration of the defendant in his confession that he had transported liquor. Held. Sufficient.

Berryman v. United States, 259 Fed., 208.

484. Circumstantial Evidence:—

Evidence tended to show that defendants shipped two trunks from Kansas City to a town in Oklahoma. These trunks were opened and were found to contain whiskey. A government agent traced check number of trunks and located parties holding checks to a sleeper on the train. He telegraphed ahead to another agent who boarded the train one station from place to which ticket read. Defendants left train at the watering tank and started to run, pursued by officer. One of the defendants dropped an overcoat carrying his name which later led to arrest. Held. Sufficient.

Williams v. United States, 257 Fed., 57.

485. Failure to Deny Incriminating Accusations:—

Defendant was the owner of a tramp launch plying on the Mississippi River. He was arrested some twenty or thirty miles above Memphis by a Tennessee officer and a cargo of whiskey found on board. Bills of lading showed destination to be Lake Providence, Louisiana. The defendant said they were intending to land in Pleasantview, Tennessee, to pick up the owner of the whiskey. The defendant's helper in his presence stated that owner of the whiskey was to meet them there with two trucks upon which to unload the whiskey. The fact that the defendant failed to deny helper's statement made in his presence leads to the inference that the cargo of whiskey was intended for Tennessee.

Bishop v. United States, 259 Fed., 195.

486. Finding Mash:—

Agents found on defendant's farm "twenty gallon iron pot on fire full of stuff which looked as if it had been boiled." In the corner of a room was found barrel containing meal and molasses. Bureau drawer contained two bottles of substance admitted by the defendant to be whiskey. Held. Sufficient.

Smiling v. United States, 258 Fed., 235.

487. Sufficiency:—

Evidence held sufficient.

Rose v. United States, 274 Fed., 245.

It was held there was sufficient evidence to warrant court in refusing to direct a verdict where it was shown agents jumped over the bar and made seizure of liquor which one of the defendants admitted to have been selling at 25 cents a drink.

Kathriner et. al. v. United States, 276 Fed., 808.

Where evidence disclosed the defendant was a member of a club selling liquor and that he personally sold drinks there, it was held sufficient to convict of unlawful possession and of maintaining a nuisance.

Page et. al. v. United States, 278 Fed., 41.

488. Venue:—

Fact that city is not located as to state held waived when omission is not called to attention of trial court.

Weems et. al. v. United States, 257 Fed., 57.

TAX.

489. Confiscatory:—

Tax held confiscatory.

J. & A. Friegberg Co. v. Dawson et. al., 274 Fed., 420.

490. Definition:—

A tax is an enforced contribution for the payment of public expenses.

Houck v. Little River Drainage District, 239 U. S., 254.

Generally speaking a tax is a pecuniary burden laid upon individuals or property for the purpose of supporting the government.

New Jersey v. Anderson, 203 U. S., 483.

491. No Repeal of 3296 Rev. Stats:—

War Prohibition Act did not repeal revised statute 3296 requiring tax to be paid before removal of liquor from warehouse.

Maresca et. al. v. United States, 277 Fed., 727.

492. Payable on Contingency:—

There is no objections to the validity of a tax as an excise, that is payable upon the happening of an event.

J. & A. Friegberg Co. v. Dawson et. al., 274 Fed., 420.

493. Revised Statute 3223 Does Not Apply:—

Although a penalty may be designated as a tax this would not prevent an injunction to restrain the assessment or collection of the tax as revised statute 3223 would not apply.

Lipke v. Lederer, (42 S. Ct., 551.)

494. Revised Statute 3296 in Effect Until Volstead Act:—

To determine if removal of liquor from warehouse on November 15th, 1919, without payment of tax constituted an offense act of February 24th, 1919, requiring tax, and revised statute 3296 should be considered together. Revised statute 3296 remained in force until Volstead Act became effective.

Maresca et. al. v. United States, 277 Fed., 727.

495. Right to Own Not Subject to Tax:—

The mere right to hold and own property cannot be made the subject of excises.

J. & A. Friegberg Co. v. Dawson et. al., 274 Fed., 420.

496. Rule to Determine if Confiscatory:—

To determine if tax is confiscatory reference must be had to market price of commodity taxed.

J. & A. Friegberg Co. v. Dawson et. al., 274 Fed., 420.

497. Sweet Cider:—

Sweet cider not taxable.

Monroe Cider Vinegar and Fruit Co. v. Riodan, 280 Fed., 624.

498. "Tax" and "Penalty":—

For distinction between tax and penalty, see

United States v. Chouteau, 202 U. S., 693;

Thome v. Lynch, 269 Fed., 995.

Penalty imposed by Section 35 cannot be imposed by distraint as to do so would be taking it without due process of law.

Kausch v. Moore, 268 Fed., 668;

Kelly v. Lewellyn, 274 Fed., 112;

Ledbetter v. Bailey, 274 Fed., 375.

499. Tax Payer Entitled to Hearing:—

Section 35 of the National Prohibition Act prescribes no definite mode for enforcing the imposition which it di-

rects, before collection of taxes levied by statutes, enacted in plain pursuance of the taxing power can be enforced the tax payer must be given fair opportunity for hearing; this is essential to due process of law.

Lipke v. Lederer, (42 S. Ct., 551.)

500. Tax Remitted:—

Tax was remitted during war prohibition.

Maresca et. al. v. United States, 277 Fed., 727.

501. When Government Carries Burden:—

The burden is upon the prosecution to prove that whiskey charged to have been removed in violation of revised statute 3296 was untax paid.

Dukes v. United States, 275 Fed., 142.

502. Wholesale Dealer:—

A wholesale dealer of liquor held subject to tax during war prohibition.

Maresca et. al. v. United States, 277 Fed., 727.

503. Word "Tax" Does Not Necessarily Mean Tax:—

The mere use of the word "tax" in an act primarily designed to define and suppress crime is not enough to show that within the true intendment of the term a tax was laid. When by its very nature the imposition is a penalty it must be so regarded.

Lipke v. Lederer, (42 S. Ct., 551.)

Bailey v. Drexel Furniture Co., (42 S. Ct., 449.)

Helwig v. United States, 188 U. S., 605;

O'Sullivan v. Felix, 233 U. S., 318.

TRANSPORTATION.

504. Across State to Another:—

It is not transportation under the Reed Amendment to carry liquors from a state in which sale was permitted across a state in which it was prohibited when it is shown that liquor was destined for another state in which sale was permitted.

Berryman v. United States, 259 Fed., 208;

Preyer v. United States, 260 Fed., 157;

Hollins v. United States, 263 Fed., 657;

Whiting v. United States, 263 Fed., 477.

505. Act of March 3rd, 1917:—

Act of March 3rd, 1917, is not applicable to a state unless it has adopted a general policy of prohibition throughout its territorial limits.

Laughter v. United States, 259 Fed., 94.

506. Arrest Before Crossing State Line:—

There is no transportation of liquor under the Reed Amendment when it is not shown that defendant or his agent has reached the state line at the time of his arrest.

Berman v. United States, 265 Fed., 259.

507. Arrest Outside of State:—

The defendant transported liquor in his boat into Tennessee, it being shown it was his intent to leave the liquor in that state. It becomes immaterial that he had incidentally gone out again with his cargo or that the arrest was made outside the state line.

Bishop v. United States, 259 Fed., 195.

508. Authority Given by Permit:—

A permit under Section 6 of the National Prohibition Act does not authorize transportation of liquor except for non-beverage purposes, therefore, a permit fraudulently secured for the purpose of transporting for other purposes to be no permit at all and of no protection to one acting under it.

Reid et. al. v. United States, 276 Fed., 253.

509. Automobile as Common Carrier:—

An automobile may become a "common carrier" depending upon use.

United States v. Simpson, 257 Fed., 860.

510. Circumstantial Evidence:—

Defendant was arrested while unloading whiskey at a wharf in Virginia. The labels on the packages and bottles indicated that the whiskey came from a point without the state of Virginia. Held. Proof of transportation from another state.

Lindsey v. United States, 264 Fed., 94.

The possession of whiskey by defendant at a time when it was being unloaded from a wharf to an automobile in the state with nothing to show any intervening pos-

session or control leads to the legitimate inference that it has been transported into the state.

Lindsey v. United States, 264 Fed., 94.

In the present case the automobile was standing in the garage with liquor in it. The defendant was in his house, eating his breakfast. The government does not claim that the defendant had theretofore been seen using it for the illegal transportation charged. The evidence might perhaps justify an inference that the liquor had been transported in the automobile to the garage, or that the liquor was loaded with intent to transport it from the garage, or that it was temporarily halted in the progress of transportation. But this is not the degree of proof required to warrant seizure. The evidence does not show that any one was discovered in the act of transporting. It is not necessary that the vehicle should be discovered while actually in motion, but it is necessary that some one should be discovered performing some act in furtherance of transportation, and the government's own evidence here shows that no one was caught in such an act at the time the seizure was made.

Furthermore, a seizure without warrant in a private garage, pursuant to an unauthorized search upon the charge of a mere statutory misdemeanor, is an unlawful seizure and cannot be the basis of a valid forfeiture under the twenty-sixth section of the Volstead law. The right of an officer of the law to enter to arrest for, or prevent, felony or breach of the peace, in which actual or threatened violence is an essential element, is not here an issue.

United States v. Slusser, 270 Fed., 821.

511. Evidence Held Admissible:—

Evidence that incorporators in forming a company used fictitious names becomes competent for the purpose of showing organization for fraudulent reasons, viz.: the unlawful transportation of liquor.

Reid et. al. v. United States, 276 Fed., 253.

512. Exception as Matters of Defense:—

It is made an offense to "cause intoxicating liquors to be transported in interstate commerce except for scientific, sacramental, medicinal or mechanical purposes," into

prohibition state. (Act of March 3rd, 1917.) It was held that the exceptions need not be negatived but that they were matters of defense.

United States v. Simpson, 257 Fed., 860.

513. For Private Use:—

Purchasing liquor in one state and transporting it into a prohibition state in a privately owned automobile for a personal use and not for sale is not violation of Act of March 3rd, 1917.

United States v. Simpson, 257 Fed., 860.

514. From Canada to United States:—

Right to seize vehicle used in transportation held not to apply to liquors transported from Canada into the United States in violation of act August 10, 1917.

United States v. One Ford Automobile, 262 Fed., 374.

515. Guilty Knowledge:—

A defendant was charged in a federal court of Tennessee with violation of the Reed Amendment in that he had purchased whiskey in Missouri and had it shipped into Tennessee. The defendant was arrested in Mississippi. The court gave an instruction that the defendant was guilty "if whiskey was ordered or purchased by someone in Caruthersville, Missouri, to be shipped to Memphis, Tennessee, in interstate commerce, and after it reached the landing in Mississippi the defendant was hired to bring that liquor from there to Lakeview, Mississippi, and there deliver it to a man from Memphis, Tennessee, then he would be guilty of assisting in transporting liquor in interstate commerce and would be guilty under the law and you should so find." Held. Error because it ignored the essential element of guilty knowledge and did not define an offense within the jurisdiction of the court.

Moran v. United States, 264 Fed., 769.

Transportation of liquor is not committed until it is actually carried into the other state.

Moran v. United States, 264 Fed., 768.

516. Held to State Offense:—

Wherein an indictment charged the purchase of liquor in one state "to be transported in interstate commerce"

for beverage purposes into another state which prohibited its manufacture, it was held to state an offense under the Reed Amendment.

United States v. Collins, 264 Fed., 380.

517. Indictment:—

Indictment held sufficient.

United States v. Simpson, 257 Fed., 860.

518. Intent:—

Mere intent to transport is not enough under circumstances in this case.

Collins v. United States, 263 Fed., 657.

519. Knowledge Necessary:—

There can be no conviction for transportation when party carries liquor in an automobile from one point in the state to another point in the same state unless it may be shown that the transportation between the two points was but a link in the interstate transportation of the liquor and that the accused had knowledge of this fact.

Ousler v. United States, 263 Fed., 968.

520. Need Not Negative Permit:—

The government is not required to prove that the defendant had no permit to transport liquor.

Sharp v. United States, 280 Fed., 86.

521. Penalty Must be Under Act Violated:—

The liquor was transported into the District of Columbia in violation of the act but not in violation of the Shepherd law. It was held in this case that there could be no forfeiture under the latter act.

District of Columbia v. Gladding, 263 Fed., 628.

522. Section 3450 Rev. Stat. Not Repealed by Section 26 of the Act:—

Section 26 of the National Prohibition Act which provides for a forfeiture of vehicles used in transporting liquor illegally relates only to transportation, consequently, does not repeal revised statute 3450 which provides for a forfeiture of a vehicle not only used in transporting but in concealing or depositing liquors on which the tax has not been paid.

Reo Atlanta Co. v. Stearns, 279 Fed., 422.

523. Sufficient to Convict:—

Evidence held sufficient to sustain a conviction of transportation.

Berryman v. United States, 259 Fed., 208;

Jones v. United States, 259 Fed., 104;

Bishop v. United States, 259 Fed., 195.

524. Transportation Company Not a Common Carrier:—

Section 240 (U. S. C. S., 10410) making it a violation of law to "knowingly ship" or caused to be shipped from one state to another any package, etc., containing spiritual liquors, etc., does not apply to carriage of liquor by a truck company not a common carrier but which confines itself to renting or hiring of trucks by day or trip.

One Truck Load of Whiskey v. United States, 274 Fed., 99.

525. Transportation in Washington Illegal:—

Transportation of liquor in the state of Washington held illegal.

Ranier Brewing Co. v. Great Northern Pacific S. S. Co., (42 S. Ct., 432).

526. Trans-Shipments Prohibited:—

The National Prohibition Act, Section 3, Title II, prohibits the transportation across the United States, and transshipment by foreign vessels.

Grogan v. Hiram Walker & Sons, (42 S. Ct., 423).

527. Voluntary Transportation Necessary:—

To constitute a violation of the Reed Amendment warranting conviction for transportation of interstate commerce there must be a voluntary transportation. There can be no conviction where a defendant is ordered to cross the state by an officer.

Payne v. United States, 265 Fed., 265.

528. When Purchase May be Shown:—

It is competent to show purchase in another state of whiskey, etc., as an incident to its unlawful transportation.

Billingsley v. United States, 274 Fed., 86.

529. When Transportation from Warehouse is Not Illegal:—

Transportation of intoxicating liquor from a warehouse to a residence for private use is not prohibited under Title II, Section 3, of the National Prohibition Act.

Street v. Lincoln Safe Deposit Co., 254 U. S., 88. (41 S. Ct., 31.)

Owner may not transport liquor from bonded warehouse to own residence for beverage purposes.

Corneli v. Moore, (42 S. Ct., 176).

Transportation can be made from bonded warehouse to wholesale druggist without violation of law.

Corneli v. Moore, (42 S. Ct., 176).

WITNESSES.

530. Agent of Dry League Not Disqualified Because of That Fact:—

The fact that witness was employed by the Dry Maintenance League to secure evidence does not disqualify him or prevent conviction upon his uncorroborated testimony.

Rose v. United States, 274 Fed., 245;

Grimm v. United States, 156 U. S. 604-611.

531. Belief in Divinity as Effecting Competency:—

For rule as to obligation of oath as effecting the competency of a witness who does not believe in divine punishment, see:

United States v. Miller, 236 Fed., 798.

532. Conviction of Crime:—

One convicted of crime may testify.

Rose v. United States, 237 Fed., 810;

Pakas v. United States, 240 Fed., 350;

Also see: Maxey v. United States, 207 Fed., 327.

533. Examination as to Third Degree:—

Cross examination as to third degree held improper.

Rich v. United States, 271 Fed., 566.

534. Good Character:—

A witness who had testified to the good character of a defendant may be cross examined on the question as to whether or not he had ever heard of the defendant being accused of acts inconsistent with the good character which he has given him by his testimony.

Jungquey v. United States, 22 Fed., 766.

535. Guilt Assumed by Falsification:—

Falsification by defendant gives rise to an assumption of guilt to be weighed by the court.

Lindsey v. United States, 264 Fed., 94;

Wilson v. United States, 162 U. S., 613;

Allen v. United States, 164 U. S., 492.

536. Impeachment:—

If witness testified differently at a former trial his testimony may be read for the purpose of impeaching him although he admitted on the second trial he did testify differently at the time of the first trial.

Tacoma Ry. & Power Co. v. Cotahry, 235 Fed., 872.

Where attorney made use of an affidavit previously sworn to by one of his own witnesses and used the same during the course of the examination of the witness for the purpose of refreshing the witness' recollection he could not be said to be impeaching his own witness.

George Brown v. O'Connor, 238 Fed., 552.

537. Impeachment of Own Witness:—

Prosecuting attorney may question a government witness as to previous statement when he is surprised by the testimony of the witness.

Schonfeld v. United States, 277 Fed., 935.

538. Leading Questions:—

For the rule as to what is considered a leading question, see:

DeWitt v. Skinner, 232 Fed., 443.

539. No Cross Examination on Illegally Obtained Evidence:—

Witness should not be cross examined on papers, checks, etc., which have been held illegally seized under a search warrant.

Honeycutt v. United States, 277 Fed., 941.

540. Previous Arrest:—

When witness may be cross examined as to previous arrest.

Fisk v. United States, 279 Fed., 12.

541. Proof of Inconsistent Statements:—

A witness testified he did not remember making inconsistent statements. It was held that this would not prevent proof that he did make such statements on the ground that it was collateral matter.

Woods v. United States, 279 Fed., 707.

542. Proof of Previous Conviction:—

Witness may be asked on cross examination if he had previously been convicted and sentenced for a similar offense.

Fields v. United States, 221 Fed., 242.

543. Recall of Witness Discretionary:—

It is discretionary with the court as to whether or not a witness should be recalled.

Haucks v. Frey, 228 Fed., 779.

544. Refreshing Recollection:—

Witness may refresh recollection by use of notes.

McClendon v. United States, 229 Fed., 591.

Witness may use documents which serve to refresh his recollection even though they were not prepared by himself.

McHenry v. United States, 276 Fed., 767.

545. Scope of Cross Examination:—

While as a rule cross examination is confined to that brought out on direct examination, still the cross examination need not necessarily be limited to the specific or particular details inquired of during the examination in chief.

DeWitt v. Skinner, 232 Fed., 443;

Commercial State Bank v. Moore, 227 Fed., 19;

Owl Creek Coal Co. v. Goleb, 232 Fed., 445.

546. Testimony False in Part:—

If a witness testified falsely in part his whole testimony may be disregarded unless corroborated.

Parks v. Roth, 234 Fed., 289.

547. When Failure of Defendant to Testify May Be Considered:—

In proceedings to forfeit an automobile it was held that inasmuch as this was a civil action the failure of the party to the action to testify might be considered by the jury.

One Buick Automobile v. United States, 275 Fed., 809.

548. Wife of Defendant Testifying Against Co-Defendant:—

The question of competency as effecting a wife of a defendant who has pleaded guilty in testifying against co-defendants.

Knoell v. United States, 239 Fed., 16.

A witness who is the wife of a co-conspirator with defendants on trial may testify, if her testimony is limited to matters not involving her husband.

Knoell v. United States, 239 Fed., 16.

549. Witness Not Compelled to Testify Against Self:—

Statute creating presumption because of possession is not compelling the witness to testify against himself.

Freedman v. United States, 276 Fed., 792.

550. Witness Not To Be Interrupted by Jurors:—

Jury men should not be permitted to interrupt a witness with unnecessary questions. A jury should listen to the evidence, counsel should illicit it.

Pacific Improvement Co. v. Weidenfeld, 277 Fed. 225.

GROUP I.

**Forms Used in Abatement of Nuisance Under Section 22,
Title II, of Volstead Act.**

- I. Bill of Complaint.**
- II. Order for Temporary Writ of Injunction.**
- III. Temporary Writ of Injunction.**
- IV. Motion to Dismiss Bill.**
- V. Answer to Bill.**
- VI. Order for Permanent Injunction.**
- VII. Permanent Injunction.**
- VIII. Amendment to Bill.**
- IX. Additional Form of Motion to Dismiss Bill.**

I.

**BILL OF COMPLAINT TO ABATE NUISANCE UNDER
SECTION 22, OF TITLE II, OF VOLSTEAD ACT.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION.

UNITED STATES OF AMERICA,	}	IN EQUITY
Plaintiff,		
v.		
(Name defendants here.)		
Defendants.		Bill for Injunction.

To the Honorable Judge of the District Court of the United States for the Southern District of Illinois, Northern Division, sitting in Equity.

I. The plaintiff, the United States of America, is a corporation sovereign, and this suit is prosecuted in its name and on its behalf by, United States Attorney, for the Southern District of Illinois, pursuant to authority thereto granted by Section 22, Title II, "National Prohibition Act," and for the purpose of enjoining and abating a certain public and common nuisance as defined in Section 21, Title II of said Act of Congress, and now existing upon certain premises situated within the State and Southern District of Illinois, Northern Division thereof, more particularly described in that paragraph of this bill marked and numbered IV.

II. The following named persons are hereby made parties defendant hereto:

....., all residents of the City of
(Name defendants here)
..... County,
..... State.

III. This is a suit of a civil nature and arising under the Constitution and laws of the United States, and jurisdiction thereof is given to this Honorable Court by Section 22 of Title II of the said Act of Congress and by Section 24 of the Judicial Code of the United States.

IV. The plaintiff is informed and verily believes and therefore alleges on information and belief that the following is a description of the premises (hereinafter referred to as "said premises") upon which said public and common nuisance exists.

.....
(Legal description of land)

V. The plaintiff is informed and verily believes and therefore alleges on information and belief that the defendant alias is the owner and proprietor of the business on said premises.

That the defendant.....is the bartender and is the holder of a license issued by the City of.....,County,, by which said license saidis authorized to operate a soft drink parlor on said premises.

That the defendants.....andare the owners of the above described premises.

VI. The plaintiff is informed and verily believes and therefore alleges on information and belief that the said premises are used and maintained as a place where intoxicating liquor, as defined by Section I of Title II of said "National Prohibition Act" is manufactured, sold repeatedly, kept, or bartered in violation of the provisions of said Title, by the defendants above named, and said premises and all intoxicating liquor and property kept and used in maintaining the same are a public and common nuisance as defined and declared by Section 21 of Title II of said "National Prohibition Act," and that said nuisance is a continuing nuisance.

That the defendant first above named sold whiskey and gin and the defendant second above named sold whiskey which is intoxicating liquor as defined by Title II of the "National Prohibition Act", on the premises described in Paragraph IV of this bill in equity. said sales being made to..... on the same premises described in Paragraph IV of this bill in equity and said person herein named who made said purchases from the defendant first above named and the defendant second above named in this bill has made affidavit setting forth the particulars of said sales and which said affidavit is attached to this bill and made a part hereof and said affidavit is marked for identification, Exhibit "A"; that the defendant first above named and the defendant second above named sold whiskey and gin which is intoxicating liquor as defined by Title II of the "National Prohibition Act", on the premises described in Paragraphs IV of this bill in equity, said sales being made to..... on the same premises described in Paragraphs IV of this bill in equity and said person herein named who made said purchases from the defendant first above named and the defendant second above named in this bill has

made affidavit setting forth the particulars of said sales and which said affidavit is attached to this bill and made a part hereof and said affidavit is marked for identification, Exhibit "B".

The plaintiff is further informed and verily believes and therefore alleges on information and belief, that the said premises are equipped with furniture and glassware, which is appropriate only for use in the handling and sale of intoxicating liquor, and that the defendant first above named sold whiskey and intoxicating liquor as defined by the "National Prohibition Act" to divers other persons on divers other days both before and subsequent to the sale of intoxicating liquor which is set forth in the said affidavit known as Exhibit "A," which is attached to this bill.

VII. The plaintiff is informed and verily believes and therefore alleges on information and belief, that unless restrained and forbidden by the injunction of this Honorable Court, the said defendants will continue in the future to keep, maintain, and use said premises, and assist in maintaining and using the same as a place where intoxicating liquor is manufactured, sold, kept, or bartered, in violation of Title II of said "National Prohibition Act," and as common and public nuisance as defined in Section 21 of said Title.

VIII. The plaintiff is informed and believes and charges the fact to be that the defendant first above named, who is the owner and proprietor of the business conducted on said premises, threatens to and is about to create a common and public nuisance, similar to the nuisance described in this bill, in another place and places in the Southern District of Illinois Northern Division, and complainant verily believes he will carry out his said threat, unless restrained by an injunction of this Court.

IX. Forasmuch, therefore as plaintiff has no remedy in the premises, except in a Court of Equity, and to the end that it may obtain from this Honorable Court the relief to which it is entitled by right and equity, and pursuant to the provisions of Section 22 of Title II of said "National Prohibition Act," it respectfully prays that the above named defendants, and each of them, be directed, full, true and perfect answer to make to this bill of complaint, but not under oath, the answer under oath of each of them being hereby expressly waived, and that the said defendants, and each of them, their agents, servants, subordinates, and employees, and each and every one of them, be enjoined and restrained from using, maintaining and assist-

ing in using and maintaining said premises as a place where intoxicating liquor is manufactured, sold, kept, or bartered, in violation of Title II of said "National Prohibition Act."

The plaintiff further prays that this Honorable Court shall issue its process directed to the United States Marshal for the Southern District of Illinois, commanding him forthwith summarily to abate said public and common nuisance now existing upon said premises, and for that purpose to take possession of said premises and to close the same and to take possession of all liquor, fixtures, and other property now used on said premises in connection with the violation constituting said nuisance, and to remove the same to a place of safe-keeping to abide the further order or this Court.

The plaintiff further prays that this Honorable Court shall enter a decree directing that all the intoxicating liquor now on said premises shall be destroyed, or, upon the application of any United States Attorney, shall be delivered to such department or agency of the United States Government as he shall designate, for medicinal, mechanical, or scientific uses, or that the same shall be sold at private sale for such purpose to any person having a permit to purchase liquor, and that the proceeds thereof be converted into the Treasury of the United States, as provided in Section 27 of Title II of said "National Prohibition Act."

The plaintiff further prays that this Honorable Court shall forthwith issue a temporary writ of injunction restraining all of the defendants herein named from conducting or permitting the continuance of said nuisance, and shall order that no liquor shall be sold, manufactured, bartered, or stored in said premises or any part thereof until the conclusion of the trial in this case; and that said temporary injunction restrain the defendants, and each of them, their agents, servants, subordinates, and employees, and all other persons, from removing or in any way interfering with the liquor or fixtures, or other things, used in connection with the violation of the "National Prohibition Act."

The plaintiff further prays that this Honorable Court shall enter a decree directing that no intoxicating liquor as defined in Title II of said "National Prohibition Act" shall be manufactured, sold, bartered, or stored in said premises, or any part thereof, and

That said premises shall not be occupied or used for one year after the date of said decree, and in the event that it appears that the owner of said premises had knowledge or rea-

son to believe that the same were occupied or used in violation of the provisions of Section 21 of Title II of said "National Prohibition Act," and suffered the same to be so occupied or used, that this Honorable Court shall enter a decree impressing a lien upon said premises, directing that the same be sold to pay all costs and fines that may be assessed or imposed against the person or persons found guilty of maintaining such nuisance.

The plaintiff further prays that an injunction in personam be issued and granted by this Honorable Court against the defendant first above named, being the person who is the owner and proprietor of the business conducted on said premises, enjoining and restraining him from manufacturing, selling, bartering, or storing any intoxicating liquor contrary to the provisions of the "National Prohibition Act," at any place within the Southern District of Illinois, Northern Division.

The plaintiff further prays that this Honorable Court shall grant such other and further relief in the premises as may be just and equitable and as to your honor shall seem just.

MAY IT PLEASE YOUR HONOR furthermore to grant unto this plaintiff not only the writs of injunction permanent and temporary, but also writs of subpoena to be directed to the said defendantscommanding them and

(Name of defendants)

each of them to appear and make answer to this bill of complaint (but not under oath, which is hereby expressly waived), and abide and perform such order and decree in the premises as to this Court shall seem just and proper as required by the principles of equity and good conscience.

UNITED STATES OF AMERICA,

Complainant.

By.....

United States Attorney for the Southern
District of Illinois.

VERIFICATION.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF IL-
LINOIS, NORTHERN DIVI-
SION. } ss.

.....being duly
(Name of District Attorney or Assistant)
sworn, deposes and says that he is Assistant United States At-
torney for the Southern District of Illinois, and is in charge of

this action. Deponent has read the foregoing bill of complaint, knows the contents thereof, and same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

.....
 Assistant United States Attorney for the
 Southern District of Illinois.

Subscribed and sworn to this.....day.....
 A. D.....

.....

SUPPORTING AFFIDAVIT

IN THE DISTRICT COURT OF THE UNITED STATES
 FOR THE SOUTHERN DISTRICT OF ILLINOIS
 NORTHERN DIVISION

At the.....Term thereof, A. D. 19....

UNITED STATES OF AMERICA

v.

.....
 (Name of defendants)

} IN EQUITY.

United States of America, South-
 ern District of Illinois, Northern
 Division

} ss.

....., being duly sworn, on oath deposes
 (Name of deponent)
 and says that he is now and was at all times hereinafter men-
 tioned an Agent acting under the authority of the Commis-
 sioner of Internal Revenue of the United States;

That on certain date at certain hour, affiant, together with
entered the premises here-
 inafter called said premises, located at.....
 being the ground floor of a brick building, situated on the fol-
 lowing described premises:

.....
 (Legal description of premises)

That said premises are fitted with a bar and glassware as
 a regular saloon, and that, on this occasion, affiant and.....
each purchased from defendant,
one drink of whiskey
 and one drink of gin, which each consumed, and for which each

paid defendant,....., \$1.50. On this occasion,.....purchased from defendant,....., a bottle of gin, for which.....paid defendant,....., \$10. This bottle of gin was taken from a package containing six bottles similar in appearance and size.

Affiant further says that on certain date at certain hour, affiant entered said premises and purchased from defendant.....two drinks of whiskey, for which affiant paid defendant.....\$1.00.

Affiant further says that he has drunk whiskey and spirituous liquor more than ten times during the past year and at frequent intervals theretofore, and is familiar with their taste and smell, and knows that they contain alcohol, and that affiant can, on tasting a whiskey or other spirituous liquor, form a judgment as to whether or not it contains more than one-half of one per cent of alcohol by volume and its fitness for beverage purposes; that basing his opinion on his experience affiant further says that the liquor above mentioned drunk by him was spirituous liquor, commonly called whiskey, containing more than one-half of one per cent of alcohol by volume and fit for beverage purposes; and that the gin mentioned above was a spirituous liquor, commonly called gin, containing more than one-half of one per cent of alcohol by volume and fit for beverage purposes.

Affiant further says that he has made inquiry and has examined the records and files in the office of the Recorder of Deeds of.....County,State, and that the owners of the above described premises are.....and....., of.....

City

.....

State

.....

Further affiant saith not.

.....

Subscribed and sworn to before me this.....day of....., A. D. 192...

.....

Clerk of the District Court of the United States
for the Southern District of Illinois.

TEMPORARY WRIT OF INJUNCTION.

Clerk.

IV.

MOTION TO DISMISS BILL OF COMPLAINT.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

UNITED STATES OF AMERICA,	}	IN EQUITY.
Plaintiff,		
v.		
..... (Name of defendants here)		
Defendants.		

MOTION TO DISMISS.

Now comes.....and defendants in the
(Name of defendants here)
above entitled cause, and move the Court to dissolve the tem-
porary Writ of Injunction issued on.....and to
(Month, day year)
dismiss said cause, and that they and each of them take the
costs in this suit incurred, for the following reasons:

1.

Because the bill of complaint filed herein states no facts
entitling the complainant to the relief prayed for therein.

2.

The complaint does not charge that the premises which are
charged in said complaint to be a public and common nuisance
either are in such a place or is such a place as is described in
Section 21, Title II, of the Prohibition Act.

3.

There is no sufficient allegation in the bill of complaint
that the premises therein described and which said bill of
complaint seeks to have declared a public and common nui-
sance, are within the jurisdiction of the Court.

4.

No facts are stated in said complaint showing that the
premises described in said complaint, is a place where intoxi-
cating liquor is sold, kept or bartered, in violation of the pro-
visions of the National Prohibition Act, and the affirmation in
said complaint in that respect, is mere opinion and conclusion
of the pleader, and is not such a specific statement of facts as
entitled the complainant in a Court of Equity, to any equitable
relief.

5.

Paragraph VI of the complaint, wherein it is attempted to be charged that said premises are used and maintained as a place where intoxicating liquor is sold, kept or bartered in violation of the provisions of said title, is averred in said complaint on information, and belief, and nothing is disclosed either by said complaint or by the oath attached thereto, or the affidavits filed in connection therewith, which conclusively show to this Court that said premises were used and maintained as a place where intoxicating liquor is sold, kept or bartered in violation of the provisions in said Title.

6.

It affirmatively appears from said Bill of Complaint that the complainant was a party to said supposed sale of liquor, and was a purchaser thereof, and was and is *particeps criminis* in the alleged transaction about which the complainant seeks equitable relief, and therefore, complainant does not come into a Court of Equity with clean hands, nor does he do equity, and is not entitled to the relief prayed for in said complaint.

7.

Because complainant seeks to require the defendant to answer as to the truthfulness of the charges in said complaint alleged, which, if sufficiently averred and proved, constitute a crime under the laws of the United States, and the effect of said complaint, if permitted to stand, prior to a conviction of the defendants (Name defendants here), of the crime attempted to be charged in said complaint, are an infringement upon their constitutional rights in this, that said Court of Equity ruling said defendants to answer as to the truthfulness of the allegations in said complaint, requires said.....

(Name defendants here)

to be witnesses against themselves, contrary to the provisions of the Constitution of the United States, and the effect must necessarily be, either to suspend the prosecution of the said defendants.....for the crime attempted

(Name defendants here)

to be charged in the complaint aforesaid, or to suspend the relief prayed for in said complaint until said defendantsare convicted of the crime attempted

(Name defendants here)

to be charged in said Bill of Complaint.

8.

The complaint in this cause is prematurely filed unless there has already been a conviction of said.....

(Name defendants here)

of the crime attempted to be charged in said complaint.

There is nothing in the National Prohibition Law which authorizes a Court of Equity to grant the relief prayed for in said complaint, prior to a conviction of some person, of the manufacture or sale or bartering of said intoxicating liquor on said premises, contrary to the provisions of said National Prohibition Law.

9.

That there is insufficiency of fact to constitute a valid cause of action in Equity against either the defendants.....
 .. (Name defendants here)

10.

That said Sections Twenty-one and Twenty-two are unconstitutional in this, that they go beyond and are broader in effect than the rights and powers granted Congress in and by the Eighteenth Amendment to the Constitution of the United States.

11.

Because the Court was without authority to issue a temporary Writ of Injunction against these defendants, without a notice to them and because the temporary Writ of Injunction issued in this case is broader in effect than permitted by Section 22 of the National Prohibition Act, and because Section 22 of the National Prohibition Act in no manner repeals the Act of Congress approved October 15, 1914, commonly entitled the "Clayton Act," under which said last named act this court acquires its authority in the matter of the insurance of injunctions.

.....
 Solicitor for Defendants.

V.

ANSWER TO BILL OF COMPLAINT.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

UNITED STATES OF AMERICA,	} IN EQUITY.
Plaintiff,	
v.	
..... (Name of defendants here)	
Defendants.	

ANSWER TO BILL OF COMPLAINT.

TO THE HONORABLE....., JUDGE
OF THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF ILLINOIS NORTHERN
DIVISION.

The ANSWER of.....and.....
to the Bill of Complaint filed herein.

These defendants, and each of them, now and at all times hereafter saving and reserving unto themselves all benefits and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and other imperfections in said Bill of Complaint contained, for answer thereto, or to so much thereof as these defendants are advised is material or necessary for them or either of them to make answer unto, they, these defendants, severally answering, say:

I.

The defendant,, denies that he is the owner and proprietor of the business conducted on the premises described in the Bill of Complaint.

II.

The defendant,, admits that he is the holder of a license issued by the City of, to operate a soft drink parlor on said premises, and neither admits nor denies that he is the bartender at said premises, but demands strict proof thereof.

III.

The defendant,, denies that on certain date, at about certain hour, he sold a drink of whiskey, and a drink of gin, to one, and one

....., or that he received the sum of one dollar and fifty cents from them, or either of them, or that on this occasion he sold to the said a bottle of gin and received therefor the sum of ten dollars, or that he did at that time and place own or possess any gin on said premises, and hereby specifically denies that he did aver, at any time or place, sell any whiskey or gin or offer to sell any whiskey or gin or any other intoxicating liquor to either the said or the said

IV.

The defendant,, hereby denies that on certain date he sold to one two drinks of whiskey or that he received from the said, one dollar, and denies that on, he sold to, a drink of gin or received from him the sum of seventy-five cents, and hereby specifically denies that he did ever, at any time or place, sell any whiskey or any gin to the said, or the said

V.

These defendants, further answering, deny that the premises described in the Bill of Complaint are used or maintained as a place where intoxicating liquor, as defined by Section One Of Title II of the National Prohibition Act, is manufactured, sold repeatedly, kept or bartered, in violation of the provisions of said Title, or that said premises are a public and common nuisance.

VI.

These defendants, and each of them further answering, deny that the plaintiff is entitled to the relief, or any part thereof, in said Bill of Complaint demanded, and pray the same advantage of this bill, as if they, and each of them, had pleaded to the said Bill of Complaint, and they and each of them pray that they may be now dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

.....
Solicitor for Defendants.

VI.

ORDER FOR PERMANENT INJUNCTION.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

At the.....Term thereof, A. D. 19....

UNITED STATES OF AMERICA,	}	IN EQUITY.
Plaintiff,		
v.		
..... (Name of defendants here) Defendants.		

This cause coming on to be heard upon the Petition of
....., filed in this cause on the.....
day of, for the purpose of permitting
..... to rent the premises hereinafter men-
tioned and described for legitimate purposes; and the Court
having examined the said Petition and being fully advised in
the premises finds that the prayer of said Petition should be
granted; and the Court further finds that the said.....
was and is a party defendant to the above entitled cause and is
bound by and by any and all orders that may be had an entered
in the proceeding the same as though he had been served more
than twenty-one days prior to

THEREFORE, IT IS ORDERED, ADJUDGED AND DE-
CREED by the Court that be, and it
is hereby permitted to rent to the
following described premises, to-wit:

.....

(Give Legal Description of Premises Here)

for the purpose of storage and storing of lawful and legitimate
merchandise, which shall not in any manner be in violation of
any law, rule or regulation of the United States of America or
for any purpose which could be construed as selling, bartering
or storing in said premises or any part thereof any liquor con-
taining more than one-half of one per cent of alcohol by vol-
ume as mentioned and specified in said decree; and the said
decree be modified to such extent and to such extent only; pro-
vided, however, that no bar, saloon or soft drink parlor (so
called), fixtures or equipment shall be used or allowed to re-
main or be in said premises during the period of the injunction

here; and provided further that said shall file in this Court a bond in the sum of One Thousand Dollars, to be approved by the Court, conditioned upon the faithful compliance with the decree of injunction herein (except to the extent the same is hereby modified) or any orders entered or to be entered in this cause, which said bond is now offered, filed and hereby approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said permanent injunction issued under said decree shall, as well as the other defendants in this cause, and does hereby enjoin the said, his servants, agents, subordinates and employees, from selling, bartering or storing in said premises or any part thereof any liquor containing more than one-half of one per cent of alcohol by volume and from maintaining said premises as a common and public nuisance.

IT IS FURTHER AGREED that the said decree, dated (month, day, year), shall remain in full force and effect except as modified by this decree.

.....
Judge.

VII.

PERMANENT INJUNCTION.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

At the.....Term thereof, A. D. 19....

UNITED STATES OF AMERICA,	}	IN EQUITY.
Plaintiff,		
v.		
.....	}	
(Name of defendants here)		
Defendants.		

WRIT OF INJUNCTION.

To (Name of defendants), and (Name of corporation), a corporation, their servants, agents, subordinates, employees and each and every one of them, and all persons acting in aid of, or in connection with them, or any of them, and all other persons whomsoever,

GREETING:

WHEREAS, THE UNITED STATES OF AMERICA, plaintiff in the above entitled cause, has filed its bill in Equity in the District Court of the United States for the Southern District of Illinois and the Northern Division thereof, and has obtained an allowance of an injunction against the above named defendants as prayed for in said bill:

NOW, THEREFORE, we, having regard to the matters in said bill contained, do hereby command and strictly enjoin you, the said (Names of defendants), and (Name of corporation), a corporation, your servants, agents, subordinates, and employees, and each and every one of you, and all other persons from keeping, selling or bartering any liquor containing more than one-half of one per cent of alcohol by volume upon the following described premises:

.....
Give legal description of premises here)

and from maintaining said premises as a common and public nuisance as defined in Section Twenty-one of the National Prohibition Act; and from using or occupying or permitting said premises to be used or occupied for any purpose whatever for a period of one year from the date hereof, or until the further order of this Court.

HEREOF FALL NOT under penalty of the law thence ensuing.

WITNESS the HONORABLE, Judge of the District Court of the United States for the Southern District of Illinois, this.....day of..... A. D. 19...., and in the year of the Independence of the United States of America.

.....
 Clerk.

VIII.

AMENDMENT TO BILL OF COMPLAINT.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS

NORTHERN DIVISION

UNITED STATES OF AMERICA,	}	IN EQUITY.
Complainant,		
v.		
.....		
(Name of defendants here)	}	AMENDMENT TO BILL FOR INJUNCTION.
Defendants.		

Now comes (Name of U. S. Attorney), United States Attorney in and for the Southern District of Illinois, leave of Court being first had and obtained and amends the Bill of Complaint heretofore filed in this cause by making (Name of corporation), a corporation organized and doing business under the laws of the State of Illinois, and having its principal office at (Name of City, County and State), a party defendant hereto.

UNITED STATES OF AMERICA.

Complainant,

By.....

United States Attorney for the Southern District
of Illinois.

IX.

MOTION TO DISMISS BILL.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS

NORTHERN DIVISION

UNITED STATES OF AMERICA,	}	IN EQUITY.
Plaintiff,		
v.		
.....		
(Name of defendants here)	}	BILL FOR INJUNCTION.
Defendants.		

NOW COMES (Name defendants here), and two of the defendants in the above entitled cause, and moves the Court to dismiss the Bill of Complaint herein for the following reasons:

1. The Bill of Complaint does not state facts sufficient to entitle the plaintiff to the relief prayed for or any part thereof, there being no Equity in the Bill.

2. The statements or allegations in the Bill are vague, uncertain and indefinite.

3. The said Bill of Complaint is not sufficient in law to be answered unto.

4. The allegations or statements in the Bill of Complaint are merely conclusions of the pleader.

5. Paragraphs number IV, V, VI, VII, and VIII are not positive and direct statements as required by the rules of this Court, but on the contrary all matters contained in said paragraphs are stated upon information and belief.

6. There is nothing in the Bill to show that these defendants had knowledge of the acts charged in said Bill to be in violation of the law mentioned in said Bill.

7. Said Bill contains no statement or allegation that these defendants had knowledge or reason to believe that the premises mentioned in said Bill were occupied or used for the sale of liquor contrary to the provisions of the Title of the Act mentioned in said Bill.

8. Said Bill contains no statement or allegation of facts which show that these defendants had knowledge or reason to believe that the premises mentioned in said Bill were occupied or used for the sale of liquor contrary to the provisions of the Title of the Act mentioned in said Bill.

9. Said Bill contains no statement or allegation that these defendants committed any act or deed in violation of the National Prohibition Act or any other law.

10. Said Bill contains no statement or allegation of facts which show that these defendants committed any act or deed in violation of the National Prohibition Act or any other law.

11. Said Bill contains no statement or allegation that these defendants in any way created, maintained or was in any way connected with or party to the creation or maintenance of a common and public nuisance mentioned in said Bill.

12. Said Bill contains no statement or allegation of facts which show that these defendants in any way created, maintained or was in any way connected with or a party to the creation or maintenance of a common and public nuisance as mentioned in said Bill.

13. There is no statement or allegation in said Bill charging this defendant with the commission of any wrong or unlawful act or the violation of any law.

14. The said Bill and the prayer thereof is unjust and inequitable towards these defendants and is depriving them of their property and property rights without due process of law.

15. And for other reasons which will be urged in the hearing.

WHEREFORE, these defendants pray that the Bill of Complaint herein may be dismissed and that they may be dismissed as parties defendant thereto.

.....
Solicitor for Defendants.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

UNITED STATES OF AMERICA,	}	IN EQUITY. BILL FOR INJUNCTION.
Plaintiff,		
v.		
..... (Name defendants here) Defendants.		

NOW COMES and
(Name defendants here)

two of the defendants in the above entitled cause and moves the Court to dismiss the temporary injunction granted in this cause for the following reasons:

1. These defendants had no notice of the application for such injunction.

2. There is no allegation or statement in the Bill or any other writing filed in this suit stating why such notice could not be given.

3. There are no facts shown by Affidavit or by the Bill of Complaint herein from which it clearly appears that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice.

4. The Bill of Complaint herein contains no Affidavit or sworn statement sufficient to warrant this Court in granting a temporary injunction.

5. The Affidavit to the Bill of Complaint herein is upon information and belief and is not sufficient in law to warrant the Court in granting such temporary injunction.

WHEREFORE these defendants pray that the said injunction be dismissed and dissolved.

.....
Solicitor for Defendants.

GROUP II.

Forms Used to Restrain Collector from Collection of Tax, Under Section 35, Title II, Volstead Act.

- I. Petition to restrain Collector of Internal Revenue in cases where property has been seized for non-payment of taxes.
- II. Notice of Application for Injunction.
- III. Certificate of Mailing.
- IV. Order for Preliminary hearing.
- V. Preliminary Injunction.

I.

**PETITION TO RESTRAIN COLLECTOR OF INTERNAL
REVENUE FROM SELLING PROPERTY LEVIED
UPON BY WARRANT OF DISTRRAINT FOR NON-PAY-
MENT OF TAX AND PENALTIES UNDER SECTION 35,
TITLE II, OF VOLSTEAD ACT.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

..... (Name of Petitioner here) Complainant,	} IN EQUITY. BILL FOR INJUNCTION.
v.	
..... Name of Collector here) Collector of Internal Revenue of the United States for the First In- ternal Revenue Collection District of Illinois, and	
..... Deputy Collector, etc.) Defendants.	

II.

TO THE HONORABLE, JUDGE OF
(Name of Judge)

THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF ILLINOIS, NORTHERN
DIVISION, IN EQUITY:

III.

....., hereinafter designated as com-
(Name of complainant)
plainant, a resident and citizen of the city of, in the
(City)
County of, and State, and within
(County) (State)
the Southern District of Illinois, Northern Division, and the
First Internal Revenue Collection District of Illinois, brings
this, his Bill of Complaint, against.....a resident
of the City of, State of.....
Collector of Internal Revenue of the United States for the
First Internal Revenue Collection District of Illinois, and
..... a resident of the City of
.....in the County of, and State of, and
(City) (County) (State)

the Southern District of Illinois, Northern Division, (or as the case may be) Deputy Collector of Internal Revenue in and for the First Internal Revenue Collection District of Illinois.

IV.

Complainant now coming and complaining, shows to the Court as follows:

1. That one, as Collector of Internal Revenue for the First Internal Revenue Collection District of, acting through and by said

(Name of state)

....., as Deputy Collector of Internal Revenue,

(Name of deputy)

has caused to be assessed against this complainant, taxes and penalties for alleged violation of the Internal Revenue Law of the United States and is proceeding to collect the same under Section 5909 to 5930, both inclusive, in this:

(a) He has caused to be assessed against this complainant a tax in the sum of \$3,000.00 for carrying on the business of a distiller of spirituous liquor, subsequent to January 16, A. D. 1919.

(b) He has caused to be assessed against this complainant a penalty in the sum of \$1,600.00 for alleged failure of this complainant, as he alleged, to pay distillers' tax and for having engaged in the business of a distiller of spirituous liquor in the in said district and at the said

(Name of city)

time and in violation of the Act of Congress relating to Internal Revenue, approved October 28th, 1919.

(c) He has caused to be assessed against this complainant an additional penalty in the sum of \$200.00 for failure to pay said taxes and penalties upon demand.

(d) He has caused to be assessed against this complainant an additional penalty in the sum of \$175.00 as interest on the above described taxes and penalties.

2. That said tax and penalties having been so assessed against this complainant, the said defendant, said.....

(Name of Collector)

Collector of Internal Revenue, by and through his deputy, the said, demanded of this com-

(Name of deputy)

plainant that he pay said taxes and penalties, in all amounting to the sum of \$4,975.00 and that on the 6th day of July, A. D. 1921, the said Collector of Internal Revenue, by and through his deputy, the said, caused to be

(Name of deputy)

issued and delivered to this complainant a notice in writing that he, the said Deputy Collector

as aforesaid, was holding a warrant of distraint against this complainant for failure to pay said tax and penalties to the amount of \$4,975.00, as aforesaid, and that, unless the said complainant responded to this notice within a short time from the 6th day of July, A. D. 1921, said warrant of distraint would be served and levied and the said Deputy Collector of Internal Revenue, said, now threatens and gives out

(Name of deputy)

that he will seize and sell the property of this complainant on said warrant of distraint to collect said amount of tax and penalties from this complainant; and this complainant fears that, unless restraint and enjoined by this Honorable Court from so doing, the saidCollector of Internal Revenue, as aforesaid, acting by and through said, as aforesaid, by virtue of said warrant, as

(Name of deputy)

aforesaid, will seize and sell the property of this complainant to an amount sufficient to pay said alleged tax and penalties.

VI.

That this complainant has not at any time since the 16th day of January, A. D. 1919, been engaged in the business of a distiller of spirituous liquor, nor has he violated Section 35 of the National Prohibition Act, or any other section of said Act, nor has he violated Section 1001 or Section 3244 of the Revised Statutes of the United States or any other section of the Revised Statutes of the United States, nor has he been engaged in any business mentioned in Chapter 3, relating to special taxes of the Revenue Laws of the United States, nor has he violated any of the sections of the Revised Statutes of the United States relating to taxes.

VII.

This complainant admits and alleges that heretofore on the 24th day of October, A. D. 1920, he was indicted by the Grand Jury of the United States District Court, in and for the Southern District of Illinois, Northern Division, and that in and by said indictment, this complainant was charged with the crime of unlawfully making and fermenting a certain mash fit for distillation in a certain building not then and there a distillery duly authorized by law and with having possession of forty gallons of raisin and rye mash fit for distillation; that the case of the United States v., has not been set down for trial at any term of court subsequent to the returning of said indictment; and this complain-

ant further alleges that he is not guilty of the said charges in said indictment; and that upon a trial of this case before a jury this complainant alleges that he will be found not guilty.

VIII.

This complainant further alleges and states the fact to be that the said indictment which was returned against him as aforesaid is the only basis and foundation for the alleged assessment of tax and penalties mentioned in paragraph five hereof as (a), (b), (c) and (d), and this complainant has not been indicted or informed against otherwise, or otherwise charged with violation of the Criminal Law of the United States or any Internal Revenue Law or regulation.

IX.

This complainant further alleges and states the fact to be that the said Collector of Internal Revenue and his deputy are not authorized by any law of the United States to assess said tax or impose said penalties against this complainant and are not authorized by any law of the United States to seize or sell, either the personal or real property of this complainant under said warrant of distraint or otherwise, as he threatens to do.

X.

That insofar as any Act of Congress purports or attempts to authorize or permit said Collector of Internal Revenue or his deputies to assess tax or penalties against this complainant, or to seize or sell the property of this complainant in payment thereof, such Acts of Congress violate the Fifth, Sixth, Seventh, Eighth and Eighteenth Amendments of the Constitution of the United States, and are void and of no effect.

XI.

This complainant further alleges that said Collector of Internal Revenue, acting by and through his deputies, has assessed against a great number of persons other than this complainant, to-wit; not less than twenty-five other persons, taxes and penalties similar to those assessed against this complainant, and in amounts varying from at least Three Hundred (\$300.00) Dollars, to several Thousand Dollars, and have instituted proceedings for the collection of the same, and have issued, or are about to cause to be issued, warrants of distraint, under the provisions of Section 5909 to 5930, of the United States Compiled Statutes of 1918, for the seizure and

of the profits of said business by reason of his being unable and his failure to continue in said business and will otherwise be irreparably damaged in the premises.

And this complainant further alleges and states the fact to be that if the said Collector of Internal Revenue or his deputy shall seize or attempt to seize any of the property of this complainant, they will thereby put a cloud upon the title thereof and greatly harrass and embarrass and impoverish this complainant and all to the irreparable injury of this complainant.

XIII.

This complainant further complaining, further alleges and states the fact to the Court that he is a **bona fide** resident of the, County of, and State of, in said district, and is residing on the farm last above described in the County of, Township of South Moline, State of, with his wife and two children; that he is permanently located at the place last aforesaid and engaged in the carrying on of his said business as a farmer; and that if liable therefore, for the tax and penalties so assessed, the Government of the United States will suffer no loss by preliminary injunction against said Collector of Internal Revenue and said Deputy Collector of Internal Revenue as aforesaid, from proceeding in the execution of the said warrant, until the further order of the Court in the premises.

XIV.

FORASMUCH THEREFORE, as this complainant is wholly remediless in the premises except in this, your Honor's Court of Equity, where such matters are properly chargeable and relievable, this defendant prays that a writ of injunction issue out of and under the seal of this Court, enjoining and restraining said defendant, the said Collector of Internal Revenue, and the Deputy Collector of Internal Revenue, as aforesaid, and every person acting through and under them, from seizing or selling the property of this complainant to enforce payment of said tax and the penalties heretofore described or any of them, and that, pending the termination thereof, there issue of this Court, its preliminary writ, enjoining and restraining said defendants, said Collector of Internal Revenue, and said Deputy Collector of Internal Revenue and every person acting through and under them, from seizing or selling the property of this complainant as aforesaid, and that, on final

hearing, this Court may decree the said property to be the property of this defendant, free from any lien or claim of the United States for tax, and that the cloud on the title of said complainant be removed, and that this complainant may have such other and further relief in the premises which the nature and circumstances of the case may require and to this Court shall seem just and equitable; that a temporary writ, restraining said Collector of Internal Revenue and the said Deputy Collector of Internal Revenue and their agents, from seizing the property of this complainant or levying the said distraint warrant upon the property of this complainant be issued by this Court to said defendant, and that this Court would set a day upon which it will hear and determine the right of this complainant to said writ of injunction.

And this complainant prays that there issue out of this Court a subpoena of the United States of America, directed to said as Collector of Internal Revenue of the United States, for the First Internal Revenue Collection District of Illinois, therein and thereby commanding them on a certain day therein to be named, to be and appear before this Honorable Court, and then and there answer (but not under oath) all and singular, the premises and to stand to and perform and abide all orders, directions and decrees as may be made against them in the premises and such as shall seem meet and agreeable to equity and good conscience.

.....

.....

VERIFICATION.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION.

..... (Name of complainant here) Complainant,	} IN EQUITY.
v.	
..... (Name of collector here) Collector of Internal Revenue of the United States, for the First Internal Revenue Collection Dis- trict of Illinois, and (Name of Deputy Collector here), Deputy Collector, etc,	
Defendants.	

....., the above named complainant,
being first duly sworn, according to law, on his oath states,
that he is of full age and a citizen of the State of Illinois, re-
siding in said district, that he has heard read the foregoing bill
of complaint and has signed the same; and that he knows the
contents of the same and the matters and things therein stated
to be true of his own knowledge, except as to the matters and
things therein stated to be upon his information and belief,
and that as to matters and things therein stated to be on his
information and belief, he believes them to be true.

.....
Subscribed and sworn to by the said.....
thisday of June, A. D. 1921.

In witness whereof, I have hereunto subscribed my hand
and affixed my official seal.

.....
Notary Public.

II.

NOTICE OF APPLICATION FOR INJUNCTION TO RESTRAIN COLLECTOR.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.

.....
(Name of complainant here)

Complainant,

v.

.....
(Name of collector here)

Collector of Internal Revenue of
the United States for the First
Internal Revenue Collection Dis-
trict of Illinois, and (Name of
Deputy Collector here), Deputy
Collector, etc.,

Defendants.

IN EQUITY

BILL FOR INJUNCTION.

TO THE ABOVE NAMED DEFENDANTS:

Take notice that on Saturday, the 25th day of June, A. D. 1921, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, the above named complainant will make application to the Honorable, Judge of the United States District Court, in and for the Southern District of Illinois, Northern Division, at the court room of the United States District Court, in Springfield, Illinois, for a writ of injunction in the above entitled cause, to enjoin and restrain you and each of you from seizing and selling the property of this complainant on any distraint warrant to enforce payment of taxes and penalties assessed against this complainant, at which time and place you may appear and resist said application if you see fit so to do.

Dated at, this
.....day of June, A. D. 1921.

.....
Solicitor for Complainant.

III.

CERTIFICATE OF MAILING NOTICE.

UNITED STATES OF AMERICA, }
 STATE OF ILLINOIS, } ss.
 ROCK ISLAND COUNTY, }

....., being first duly sworn, according to law, on her oath deposes and says that she is of full age and a resident of the City of, County of, and State of, that on the 22nd day of June, A. D. 1921, at or about four thirty (4:30) o'clock of the afternoon, she deposited in the United States mail, at the Post Office at, and postage prepaid, addressed to, Collector of Internal Revenue, Federal Building, Chicago, Illinois, one copy of the foregoing and attached notice of application for injunction.

Deponent further deposes and says that at the time and place last aforesaid, she also deposited in the United States mail, postage prepaid, one copy of the attached and foregoing Notice of Application for Injunction, addressed to, Deputy Collector of Internal Revenue, Federal Building, Rock Island, Illinois.

Further deponent saith not.

.....

Subscribed and sworn to before me by the said.....
, this 22nd day of June, A. D. 1921.

VI.

ORDER FOR PRELIMINARY INJUNCTION.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

..... (Name of Complainant here) Complainant, v. (Name of Collector here) Collector of Internal Revenue of the United States for the First In- ternal Revenue Collection District of Illinois, and EDGAR MORSE, Deputy Collec- tor, etc., Defendants.	}	IN EQUITY. ORDER FOR PRELIMINARY INJUNCTION.
---	---	---

IT IS ORDERED, That a preliminary injunction issue in the above entitled cause, temporarily enjoining and restraining the defendants, and each of them, their agents, deputies and employees, from proceeding any further in the collection of the asserted tax penalties and interest thereon or any part thereof, set forth and described in the Bill of Complaint therein against the said Complainant by seizure or sale of his property or any part thereof until this Court shall make other and further order to the contrary.

June, A. D. 1921, at o'clock....M.
Entered,

.....
United States District Judge.

V.

PRELIMINARY INJUNCTION.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

The President of the United States of America, to
....., Collector of Internal Revenue of the
United States for the First Internal Revenue Collection
District of Illinois and, Deputy Col-
lector,

GREETING :

Whereas, It has been represented to us in our District Court of the United States for the Southern District of Illinois, Northern Division, in Chancery sitting, on the part of
, in a certain bill exhibited in said Court, to the Judge thereof, against, Collector of Internal Revenue of the United States for the First Internal Revenue Collection District of Illinois and, Deputy Collector, acting under his instructions that there has been issued by the said, Collector of Internal Revenue of the United States for the First Internal Collection District of Illinois, and.....,Deputy Collector, acting under his instructions, a certain writ of distraint against the assets of the said....., under which writ the said defendants purpose and threaten to immediately seize and sell whatever of the property of the said, they may find in the said District, and to apply the same to the satisfaction of a certain purported tax, and it being ordered that a Preliminary Injunction issue out of the said Court, upon said bill, temporarily enjoining you, the said defendants, and each of you, as prayed in said bill:

We, therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command you, the said, Collector of Internal Revenue of the United States for the First Internal Collection District of Illinois, and, Deputy Collector, that **YOU DO ABSOLUTELY DESIST AND REFRAIN** from proceeding any further in the collection of the asserted taxes, penalties and interest thereon, or any part thereof, against the said, by seizure or sale of his property, or of any part thereof, until this Court shall make other and further order to the contrary. Hereof fail not under penalty of what the law directs.

To the Marshal of the Southern District of Illinois to execute and return in due form of law.

Witness, the Honorable, Judge of our District Court, and the seal thereof, at Peoria, in said District, this 25th day of July, in the year of our Lord one thousand nine hundred and twenty-one and our Independence the one hundred and forty-fifth.

Duplicate Writ:
A true copy:	Clerk.
Attest:	
.....	Clerk.

GROUP III.**Forms Pertaining to Search.**

- I. Affidavit for Search Warrant.
- II. Search Warrant.
- III. Return to Search Warrant.
- IV. Petition to Quash Search Warrant.
- V. Order Denying Petition to Quash.

I.

AFFIDAVIT FOR SEARCH WARRANT.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF IL- } ss.
LINOIS, SOUTHERN DIVI- }
SION, }

....., being duly sworn, on oath
deposes and says that he is a Federal Prohibition Officer within
the above Division and District.

That certain intoxicating liquor, to-wit, a
liquor containing more than one-half of one per cent of alcohol
by volume is being sold on the premises known as.....
.....
in the of, County of
....., and State of Illinois, and within the
Southern Division of the Southern District of Illinois.

That the said premises are occupied by

.....
That on the day of,
A. D. 192..., this affiant purchased on the above described
premises of intoxicating liquor,
to-wit,

That intoxicating liquor, to-wit, a,
the exact amount of which is unknown to this affiant is pos-
sessed and used on the above described premises by the said
..... in violation of
the National Prohibition Act.

.....
Subscribed and sworn to before me this day of
..... A. D. 192....

.....
United States Commissioner for the Southern Dis-
trict of Illinois.

SEARCH WARRANT.

UNITED STATE OF AMERICA, }
SOUTHERN DISTRICT OF ILLI- } ss.
NOIS, SOUTHERN DIVISION, }

To
in and for the Southern Division of the Southern District of
Illinois, and to his, or any of them.

WHEREAS, Complaint on oath and in writing, a copy of which said complaint is hereto attached, has this day been made before me,, a United States Commissioner in and for the said Division and District, by, alleging that intoxicating liquor is being sold upon certain premises in the of, County of, and State of Illinois, and within the Division and District aforesaid, said premises being known and described as and alleging further that the said has purchased intoxicating liquor upon said premises on the day of, A. D. 192..., and that there is upon the said premises certain intoxicating liquor possessed on said premises in violation of the National Prohibition Act, the exact amount of which is unknown to this affiant.

YOU ARE THEREFORE COMMANDED IN THE NAME OF THE PRESIDENT OF THE UNITED STATES to enter said premises in the day time or night time and there diligently to investigate and search for the liquor..... herein described, and to seize the same and bring the same before me, and to report your acts concerning the same as required of you by law.

GIVEN UNDER MY HAND AND SEAL this day of, A. D. 192....

.....

United States Commissioner.

III.

RETURN TO SEARCH WARRANT.

RECEIVED this warrant this day of A. D. 192....

RETURNED this warrant this day of A. D. 192....

I have made search of the premises described in the within warrant and I have seized the following property:

(a) I have further executed the within warrant by giving a copy thereof, together with a receipt for the property taken, to

(b) No person having been found on the within premises I have left a copy of the within warrant and a receipt for the property taken in the place where the property taken was found.

I,, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all property taken by me on the warrant.

.....
By.....
.....

Subscribed and sworn to before me this day of
....., A. D. 192....

.....
.....

IV.

PETITION TO SQUASH SEARCH WARRANT.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

UNITED STATES

v.

CERTAIN DOCUMENTS.

}
}
}

Now comes the petitioner,, and alleges that he is a citizen of the United States and a resident of the City of, and State of, and that he is the occupant of the premises described in the search warrant issued herein,, in said City of, and that he is the person in whose possession the papers, documents and memoranda described in the said search warrant are claimed to be, and your petitioner respectfully prays that said search warrant may be quashed and held for naught, and that the papers, memoranda, and documents taken under the pretended authority thereof may be immediately returned to his possession for the following reasons:

First. The affidavit and sworn statement of one
....., upon which the said search warrant was issued, furnished no sufficient basis for the issuance of said search warrant, for the reason that there are no facts stated in said affidavit or in said sworn testimony which show any probable cause for the issuance of the warrant;

Second. The said search warrant is vague, insufficient and uncertain for the reason that the property attempted to be taken thereunder is not particularly identified and described;

Third. There has been presented no sufficient affidavit or statements of fact, supported by oath or affirmation, showing that a felony or other violation of any laws of the United States has been committed, as a ground for the issuance of said search warrant;

Fourth. The said search warrant purports to have been issued upon the affidavit of one, "that he has good reason to believe, and does verily believe, that in and upon certain premises there has been and now is located and concealed certain property, which said property has been used as a means to commit certain felonies." But the facts, if any, which furnish the foundation for said alleged belief are not set out in said affidavit;

Fifth. The affidavit and the sworn testimony, in support of the application for said search warrant, do not set out facts from which it would appear how or in what manner, or by what means, the said papers, documents and memoranda described in the said search warrant were used or attempted to be used in the commission of any alleged felony;

Sixth. There is not pending in this Court, or in any other Court of the United States, any charge against this petitioner of the commission of any of the alleged felonies referred to in said affidavit or in said sworn testimony, nor is there any charge of any such alleged felony now pending in this Court, or in any other Court of competent jurisdiction against any of the corporation named in said affidavit and said sworn testimony;

Seventh. The affidavit and the sworn testimony in support of the application for said search warrant do not set forth the facts tending to show the grounds of the application or probable cause for believing that they exist.

Eighth. The said search warrant is illegal and void for the reason that under its pretended authority the petitioner and his premises are being subjected to an unreasonable search and seizure in violation of the Fourth Amendment to the Constitution of the United States;

Ninth. The said search warrant is void and illegal in that through and by means thereof an attempt is being made to compel the petitioner to be a witness against himself, in viola-

tion of the Fifth Amendment to the Constitution of the United States;

Tenth. Section of Title of said Act of, under which said search warrant was issued, does not authorize the search for and seizure of "papers," and for that reason said search warrant is void;

Eleventh. Said search warrant is void for the reason that it authorizes the search for and seizure of "papers" of the petitioner and other named in the said affidavit and sworn testimony, which "papers" are not "papers" claimed in said affidavit and in said sworn testimony to have been used in violation of Section, Title, of said Act of

Twelfth. The said search warrant is void for the reason that it does not particularly describe the property to be seized, in this, that it does not state who is the owner of the property to be searched for and seized;

Thirteenth. The said search warrant is void because it authorizes and directs the search and seizure of communications, letters, papers and documents of the petitioner, without regard to the question as to whether such communications, letters, papers, and documents are privileged communications as between attorney and client.

Wherefore, for the reasons aforesaid, the petitioner respectfully prays that the said search warrant may be quashed and the Court Order for the issuance thereof vacated, and that all papers, documents, memoranda and books already seized by said officers and agents under the pretended authority of said search warrant may be forthwith returned to the petitioner, which said papers and documents are referred to in the receipt of the Deputy United States Marshal, attached hereto, marked Exhibit A and made a part hereof.

.....
Petitioner.

.....
Attorneys for Petitioner.

V.

ORDER DENYING PETITION TO QUASH.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF ILLINOIS, } ss.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

UNITED STATES OF AMERICA, } IN THE MATTER OF
v. } THE PETITION OF
CERTAIN DOCUMENTS. }
TO QUASH, ETC.

Now on this day comes on for hearing the petition of
....., in the above entitled cause, to set aside
and vacate the order entered in said cause on
and to quash the search warrant which issued pursuant to said
order, and for the return of certain letters, papers and docu-
ments, and the parties hereto being now present in Court, and
the Court having heard the arguments of counsel for the re-
spective parties, and being fully advised in the premises, it is
hereby

Ordered, Adjudged and Decreed that the prayer of said
petition of to set aside and vacate said
order of, and to quash the search war-
rant issued in pursuance thereof and for the return of certain
letters, papers and documents, be, and the same is hereby over-
ruled and denied, and said petition is hereby ordered dismissed.

.....
Judge.

GROUP IV.**Forms to Be Used in Application for Return of
Property Seized.**

- I. Petition for Return of Liquor Seized without Warrant.
- II. Order Returning Liquor Unlawfully Seized.

I.

PETITION FOR RETURN OF LIQUOR SEIZED WITHOUT WARRANT.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

.....
(Certain party)

v.

PETITION FOR RE-
TURN OF PROP-
ERTY.

.....
(District Attorney, Prohibition Agent, or
as case may be)

Now comes, by,
his attorney, and shows unto the Court that he is a resident of
....., occupying the second story of the building
(City) (State)
located at, That he conducts a
(Address) (City) (State)
cigar, confectionery and soft drink business in the first story
of said building, but does not conduct any business in the sec-
ond story of said building, but uses the same entirely as a home
for himself and family. That he was so occupying said home
on, and still continues to do so.
(Certain date)

This petitioner further represents that on said
(Certain date)
he had in his possession in said home, certain liquors for
his own private use, the same then and there being tax paid.
That said liquors consisted of
.....
(Here describe liquors, etc.)

That he bought said liquors in the regular course of busi-
ness from,,,
(Name) (Address) (City) (State)
prior to, and that he acquired, possessed and used
(Certain date)
said liquors for his own use and for no other.

This petitioner further represents that on said
(Certain date)
without right or warrant of any kind, some person unknown
to this petitioner, representing himself to be a United
States Revenue officer, entered said dwelling house of your
petitioner on the second floor of said premises, and without
right or warrant, seized all said liquors, together with contain-
ers, and delivered the same into possession of

and, who now unlawfully withhold the same from the possession of this petitioner.

This petitioner further represents that an effort was made by officers of this Court to indict this petitioner since said liquors were seized and held for violation of the National Prohibition Act, but that no indictment or other prosecution has been had against this petitioner on said account. That this petitioner has never at any time been arrested, tried or charged in any Court with the violation of any liquor laws of the city, state or nation.

This petitioner further represents that he is informed and believes that said liquors are under the care and control of the above named, and without right or lawful authority to hold the same.

Your petitioner therefore prays that an order of this Honorable Court be entered against the said and, directing them to return all of said property, liquors, spirits and containers to this petitioner.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of, A. D. 19....

..... (Seal)

STATE OF }
 COUNTY } ss.

....., being first duly sworn, on his oath states that he is the petitioner in the foregoing petition; that he has read said petition and that the facts therein set forth are true.

.....

Subscribed and sworn to before me this day of, A. D. 19....

.....

Notary Public.

II.

ORDER RETURNING LIQUOR UNLAWFULLY SEIZED.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

STATE OF	}	ORDER FOR RETURN SS. OF GOODS.
..... COUNTY		
(Certain party)		
.....		
v.		
.....		
(District Attorney, Prohibition Agent, or as case may be)		

And now on this day this cause coming on to be heard upon the petition of, by, his attorney, and it appearing to the Court that the defendants, and, have been duly served with a notice of the hearing, and the Court having heard said petition and evidence in support thereof, and the arguments of counsel, and being fully advised in the premises, doth find that the allegations in said petition are true, and that the following property, liquors and containers are wrongfully withheld by the said and from the said petitioner....., towit:

(Here describe liquor, etc.)

.....

It is therefore ordered, adjudged and decreed by the Court that the said and deliver all of said property, liquor and containers to the petitioner,

.....
Judge.

GROUP V.**Forms to Be Used in Application for Reopening Premises
Closed by Injunction.**

- I. Petition to Reopen Premises Closed by Abatement Proceedings.
- II. Order Modifying Decree Permitting Premises to Reopen.
See Form VI, Group I.

**PETITION FOR MODIFICATION OF DECREE IN ABATE-
MENT PROCEEDINGS UNDER VOLSTEAD ACT.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

At the Term thereof, A. D. 19.....

UNITED STATES OF AMERICA, }
Complainant. } IN EQUITY.

TO THE HONORABLE JUDGE OF SAID COURT:

YOUR PETITIONER,, RESPECT-
FULLY REPRESENTS that it is one of the defendants in the
above entitled cause, and that it is the holder and owner of a
long time lease on the premises described in the decree entered
herein at the present term of this Court bearing date of
.....,, which premises are therein described:
(Month) (Day) (Year)

.....
(Legal description here)

YOUR PETITIONER FURTHER REPRESENTS UNTO
YOUR HONOR that one is desirous of
renting the said premises from your petitioner for the purpose
of storing lawful and legitimate merchandise therein, which
shall not in any manner be in violation of any law, rule or regu-
lation of the United States of American, and shall not be any
liquor kept therein which shall contain more than one-half of
one per cent of alcohol by volume nor shall said premises be
maintained as a common and public nuisance; and that the said
occupancy shall not be in violation of the said decree.

YOUR PETITIONER FURTHER REPRESENTS that it
did not, nor did any of its officers or agents, have any knowl-
edge at the time of the filing of the Bill of Complaint for in-
junction in this cause on,, that the said
(Month) (Day) (Year)
premises was used in violation of any law of the United States
of America, and that this petitioner was not nor were any of
its officers or agents a party to any violation of any law in, upon
or about the said premises as charged in said Bill.

YOUR PETITIONER FURTHER REPRESENTS that in
equity and good conscience it should not be deprived of the
use and income of said premises by reason of any act of any

other defendant to this proceeding, and that your petitioner should be permitted to open the said premises for the purpose of renting the same for the storage of legitimate and lawful merchandise as aforesaid.

YOUR PETITIONER herewith presents the Entry of Appearance of, who enters his full appearance in the above entitled cause and becomes a party to this suit and agrees to be bound by the terms of the said decree.

THEREFORE, YOUR PETITIONER PRAYS that the Court will modify the said decree so as to permit the said to become a party thereto and also granting the permission to your petitioner to rent the said premises for the storage of legitimate and lawful merchandise as aforesaid and that the said decree may be modified to such extent; and that your petitioner may have such other and further relief in the premises as to the Court of Equity shall seem meet, right and just.

.....
Petitioner.

THE NATIONAL PROHIBITION ACT.

AN ACT to prohibit intoxicating beverages, and to regulate the manufacture, production, use and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled. That the short title of this act shall be the "National Prohibition Act."

Concerning Manufacture, Sale, Etc., During War and Demobilization: Sec. 1. After June thirtieth, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, for the purpose of conserving the manpower of the Nation, and to increase efficiency in the production of arms, munitions, ships, food, and clothing for the Army and Navy, it shall be unlawful to sell for beverage purposes any distilled spirits, and during said time no distilled spirits held in bond shall be removed therefrom for beverage purposes except for export. After May first, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, no grains, cereals, fruits, or other food products shall be used in the manufacture or production of beer, wine, or other intoxicating malt or vinous liquor for beverage purposes. After June thirtieth, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, no beer, wine, or other intoxicating malt or vinous liquor shall be sold for beverage purposes except for export. The Commissioner of Internal Revenue is hereby authorized and directed to prescribe rules and regulations, subject to the approval of the Secretary of the Treasury, in regard to the manufacture and sale of distilled spirits and removal of

distilled spirits held in bond after June thirtieth, nineteen hundred and nineteen, until this Act shall cease to operate, for other than beverage purposes; also in regard to the manufacture, sale, and distribution of wine for sacramental, medicinal, or other than beverage uses. After the approval of this Act no distilled malt, vinous, or other intoxicating liquors shall be imported into the United States during the continuance of the present war and period of demobilization: Provided, that this provision against importation shall not apply to shipments en route to the United States at the time of the passage of this act.

Any person who violates any of the foregoing provisions shall be punished by imprisonment not exceeding one year, or by fine not exceeding \$1,000, or by both such imprisonment and fine: Provided, that the President of the United States be, and hereby is, authorized and empowered, at any time after the passage of this act, to establish zones of such size as he may deem advisable about coal mines, munition factories, shipbuilding plants, and such other plants for war material as may seem to him to require such action whenever in his opinion the creation of such zones is necessary to, or advisable in, the proper prosecution of the war, and that he is hereby authorized and empowered to prohibit the sale, manufacture, or distribution of intoxicating liquors in such zones, and that any violation of the President's regulations in this regard shall be punished by imprisonment for not more than one year or by fine of not more than \$1,000, or by both such fine and imprisonment: Provided, further, that nothing in this act shall be construed to interfere with the power conferred upon the President by section fifteen of the food-control act, approved August tenth, nineteen hundred and seventeen. (Res. Sept. 12, 1918, No. 40, c. 170, 40 Stat.; Act. Nov. 21, 1918, c. 212, 1, 40 Stat.)

Note: Section 2 provides that "under such rules, regulations and bonds as secretary of treasury may prescribe, distilled spirits of alcohol produced prior to October 3rd, 1917, from products the growth of the Island of Porto Rico may be admitted from said island into the United States for industrial purposes in the arts and science. Such alcohol or distilled spirits shall not be used for beverage purposes, etc."

To Provide for the Enforcement of War Prohibition:—

Sec. 1. The term “War Prohibition Act” used in this act shall mean the provisions of any act or acts prohibiting the sale and manufacture of intoxicating liquors until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States. The words “beer, wine, or other intoxicating malt or vinous liquors” in the War Prohibition Act shall be hereafter construed to mean any such beverages which contain one-half of 1 per centum or more of alcohol by volume: Provided, that the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of Title II of this act, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as the commissioner may by regulation prescribe.

Commissioner Must Report Violations of War Prohibition Act:—Sec. 2. The commissioner of internal revenue, his assistants, agents, and inspectors, shall investigate and report violations of the War Prohibition Act to the United States attorney for the district in which committed, who shall be charged with the duty of prosecuting, subject to the direction of the attorney general, the offenders as in the case of other offenses against laws of the United States; and such commissioner of internal revenue, his assistants, agents, and inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury.

Where Liquor is Kept is Declared to be a Public Nuisance:—Sec. 3. Any room, house, building, boat, vehicle, structure, or place of any kind where intoxicating liquor is sold, manufactured, kept for sale, or bartered in violation of the War Prohibition Act, and all intoxicating liquor and all property

kept and used in maintaining such a place, is hereby declared to be a public and common nuisance, and any person who maintains or assists in maintaining such public and common nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$100 nor more \$1,000, or be imprisoned for not less than thirty days or more than one year, or both. If a person has knowledge that his property is occupied or used in violation of the provisions of the War Prohibition Act and suffers the same to be so used, such property shall be subject to a lien for, and may be sold to pay, all fines and costs assessed against the occupant of such building or property for any violation of the War Prohibition Act occurring after the passage hereof, which said lien shall attach from the time of the filing of notice of the commencement of the suit in the office where the records of the transfer of real estate are kept; and any such lien may be established and enforced by legal action instituted for that purpose in any court having jurisdiction. Any violation of this title upon any leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease.

District Attorney and Attorney General May Prosecute Suit in Equity:—Sec. 4. The United States attorney for the district where such nuisance as is defined in this act exists, or any officer designated by him or the attorney general of the United States, may prosecute a suit in equity in the name of the United States to abate and enjoin the same. Actions in equity to enjoin and abate such nuisance may be brought in any court having jurisdiction to hear and determine equity causes. The jurisdiction of the courts of the United States under this section shall be concurrent with that of the courts of several states.

If it be made to appear by affidavit, or other evidence under oath, to the satisfaction of the court, or judge in vacation that the nuisance complained of exists, a temporary writ of injunction shall forthwith issue restraining the defendant or defendants from conducting or permitting the continuance of such nuisance until the conclusion of the trial. Where a temporary injunction is prayed for, the court may issue an order restraining the defendants and all other persons from removing or in any way interfering with the liquor or fixtures,

or other things used in connection with the violation constituting the nuisance. No bond shall be required as a condition for making any order or issuing any writ of injunction under this act. If the court shall find the property involved was being unlawfully used as aforesaid at or about the time alleged in the petition, the court shall order that no liquors shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or places of any kind, for a period of not exceeding one year, or during the war and the period of demobilization. Whenever an action to enjoin a nuisance shall have been brought pursuant to the provisions of this act, if the owner, lessee, tenant, or occupant appears and pays all cost of the proceedings and files a bond, with sureties to be approved by the clerk of the court in which the action is brought, in the liquidated sum of not less than \$500 nor more than \$1,000, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein a period of one year thereafter, or during the war and period of demobilization, the court, or in vacation the judge, may, if satisfied of his good faith, direct by appropriate order that the property, if already closed or held under the order of abatement, be delivered to said owner, and said order of abatement canceled, so far as the same may relate to said property; or if said bond be given and costs therein paid before judgment on an order of abatement the action shall be thereby abated as to said room, house, building, boat, vehicle, structure, or place only. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law.

In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this Title, the court, or in vacation a judge thereof, may summarily try and punish the defendant. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which such injunction issued information under oath setting out the alleged facts constituting the violation, whereupon the court or judge shall forthwith cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand

the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment of not less than thirty days, nor more than twelve months, or by both such fine and imprisonment.

Commissioner and Inspector May Prosecute All Offenses:

—**Sec. 5.** The commissioner of internal revenue, his assistants, agents and inspectors, and all other officers of the United States whose duty it is to enforce criminal laws, shall have all the power for the enforcement of the War Prohibition Act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the laws of the United States.

Any Provision Hereof Invalid All Other Valid:—Sec. 6.

If any section or provision of this act shall be held to be invalid, it is hereby provided that all other provisions of this act which are not expressly held to be invalid shall continue in full force and effect.

Act Does Not Repeal War Prohibition:—Sec. 7. None of the provisions of this act shall be construed to repeal any of the provisions of the "War Prohibition Act," or to limit or annul any order or regulation prohibiting the manufacture, sale, or disposition of intoxicating liquors within certain prescribed zones or districts, nor shall the provisions of the act be construed to prohibit the use of the power of the military or naval authorities to enforce the regulations of the President or secretary of war or navy issued in pursuance of law, prohibiting the manufacture, use, possession, sale, or other disposition of intoxicating liquors during the period of the war and demobilization thereafter.

Note: Above sections repealed by act of March 3rd, 1921.

TITLE II.

PROHIBITION OF INTOXICATING BEVERAGES.

Meaning of Liquor and "Intoxicating Liquor":—Sec. 1. When used in Title II and Title III of this act (1) the word

“Liquor” or the phrase “intoxicating liquor” shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes: Provided, that the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of this title, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as the commissioner may by regulation prescribe.

(2) The word “person” shall mean and include natural persons, associations, copartnerships, and corporations.

(3) The word “commissioner” shall mean commissioner of internal revenue.

(4) The term “application” shall mean a formal written request supported by a verified statement of facts showing that the commissioner may grant the request.

(5) The term “permit” shall mean a formal written authorization by the commissioner setting forth specifically therein the things that are authorized.

(6) The term “bond” shall mean an obligation authorized or required by or under this act or any regulation, executed in such form and for such a penal sum as may be required by a court, the commissioner, or prescribed by regulation.

(7) The term “regulation” shall mean any regulation prescribed by the commissioner with the approval of the secretary of the treasury for carrying out the provisions of this act, and the commissioner is authorized to make such regulations.

Any act authorized to be done by the commissioner may be performed by an assistant or agent designated by him for that purpose. Records required to be filed with the commissioner may be filed with an assistant commissioner or other person designated by the commissioner to receive such records.

Commissioner to Report Violation and United States Attorney to Prosecute:—Sec. 2. The commissioner of internal revenue, his assistants, agents, and inspectors shall investigate and report violations of this act to the United States attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the attorney general, as in the case of other offenses against the laws of the United States; and such commissioner of internal revenue, his assistants, agents, and inspectors may swear out warrants before the United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section 1014 of the Revised Statutes of the United States is hereby made applicable to the enforcement of this act. Officers mentioned in said section 1014 are authorized to issue search warrants under the limitations provided in Title XI of the act approved June 15, 1917.

After Act Becomes Effective Liquor Cannot Be Sold, Etc.:—Sec. 3. No person shall on or after the date when the eighteenth amendment to the constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: Provided, that nothing in this act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts.

Certain Articles Exempted:—Sec. 4. The articles enumerated in this section shall not, after having been manufactured

and prepared for the market, be subject to the provisions of this act if they correspond with the following descriptions and limitations, namely :

(a) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.

(b) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopeia, National Formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes.

(c) Patented, patent, and proprietary medicines that are unfit for beverage purposes.

(d) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(e) Flavoring extracts and sirups that are unfit for use as a beverage, or for intoxicating beverage purposes.

(f) Vinegar and preserved sweet cider.

A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make the reports specified in this act and as directed by the commissioner. No such manufacturer shall sell, use or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, sirup, or the articles named in paragraphs b, c and d of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the article.

Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c, and d of this section for beverage purposes, or any extract or sirup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, sirup, or other article is used as an ingredient, shall be subject to the penalties provided in section 29 of this title. If the commissioner shall find, after notice and hearing as provided for in

section 5 of this title, that any person has sold flavoring extract, sirup or beverage in violation of this paragraph, he shall notify such person, and any known principal for whom the sale was made, to desist from selling such article; and it shall thereupon be unlawful for a period of one year thereafter for any person so notified to sell any such extract, sirup, or beverage without making an application for, giving a bond, and obtaining a permit so to do, which permit may be issued upon such conditions as the commissioner may deem necessary to prevent such illegal sales, and in addition the commissioner shall require a record and report of sales.

Commissioner May Make Analysis if Necessary:—Sec. 5. Whenever the commissioner has reason to believe that any article mentioned in section 4 does not correspond with the descriptions and limitations therein provided he shall cause an analysis of said article to be made, and if, upon such analysis, the commissioner shall find that said article does not so correspond, he shall give not less than fifteen days' notice in writing to the person who is manufacturer thereof to show cause why said article should not be dealt with as an intoxicating liquor, such notice to be served personally or by registered mail, as the commissioner may determine, and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said article fails to show to the satisfaction of the commissioner that the article corresponds to the descriptions and limitations provided in section 4 of this title his permit to manufacture and sell such article shall be revoked. The manufacturer may by appropriate proceeding in a court of equity have the action of the commissioner reviewed, and the court may affirm, modify, or reverse the finding of the commissioner as the facts and law of the case may warrant, and during the pendency of such proceedings may restrain the manufacture, sale or other disposition of such article.

Permit Must Be Obtained:—Sec. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may without a permit, purchase and use

liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the commissioner is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may under such rules, regulations, and conditions as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor, to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution.

All permits to manufacture, prescribe, sell or transport liquor, may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: Provided, that the commissioner may without formal application or new bond extend any permit granted under this act or laws now in force after August 31 in any year to December 31 of the succeeding year: Provided, further, that permits to purchase liquor for the purpose of manufacturing or selling as provided in this act shall not be in force to exceed ninety days from the day of issuance. A permit to purchase liquor for any other purpose shall not be in force to exceed thirty days. Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. No permit shall be issued to any person who within one year prior to the application therefor or issuance thereof shall have violated the terms of any permit issued under this title or any law of the United States or of any state regulating traffic in liquor. No permit shall be issued to anyone to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his state to compound and dispense medicine prescribed by a duly licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession. Every permit shall be in writing, dated when issued and signed by the commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written

application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

The commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted the commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this title. In the event of the refusal by the commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in section 5 hereof.

Nothing in this title shall be held to apply to the manufacture, sale, transportation, importation, possession, or distribution of wine for sacramental purposes, or like religious rites, except section 6 (save as the same requires a permit to purchase) and section 10 hereof and the provisions of this act prescribing penalties for the violation of either of said sections. No person to whom a permit may be issued to manufacture, transport, import, or sell wines for sacramental purposes or like religious rites shall sell, barter, exchange, or furnish any such to any person not a rabbi, minister of the gospel, priest, or an officer duly authorized for the purpose by any church or congregation, nor to any such except upon an application duly subscribed by him, which application, authenticated as regulations may prescribe, shall be filed and preserved by the seller. The head of any conference or diocese or other ecclesiastical jurisdiction may designate any rabbi, minister, or priest to supervise the manufacture of wine to be used for the purposes and rites in this section mentioned, and the person so designated may, in the discretion of the commissioner be granted a permit to supervise such manufacture.

Physician Holding Permit, Only One Authorized to Give Prescription:—Sec. 7. No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine

by such person is necessary and will afford relief to him from some known ailment. No more than a pint of spirituous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once. Any pharmacist filing a prescription shall at the same time indorse upon it over his own signature the word "cancelled," together with the date when the liquor was delivered, and then make the same a part of the record that he is required to keep as herein provided.

Every physician who issued a prescription for liquor shall keep a record, alphabetically arranged in a book prescribed by the commissioner, which shall show the date of issue, amount prescribed, to whom issued, the purpose or ailment for which it is to be used and directions for use, stating the amount and frequency of the dose.

Commissioner Must Issue Blank for Prescription:—Sec. 8.

The commissioner shall cause to be printed blanks for the prescriptions herein required, and he shall furnish the same, free of cost, to physicians holding permits to prescribe. The prescription blanks shall be printed in book form and shall be numbered consecutively from one to one hundred, and each book shall be given a number, and the stubs in each book shall carry the same numbers as and be copies of the prescriptions. The books containing such stubs shall be returned to the commissioner when the prescription blanks have been used, or sooner, if directed by the commissioner. All unused, mutilated, or defaced blanks shall be returned with the book. No physician shall prescribe and no pharmacist shall fill any prescription for liquor except on blanks so provided, except in cases of emergency, in which event a record and report shall be made and kept as in other cases.

Permit May Be Revoked:—Sec. 9. If at any time there shall be filed with the commissioner a complaint under oath setting forth facts showing, or if the commissioner has reason to believe, that any person who has a permit is not in good faith conforming to the provisions of this act, or has violated the laws of any state relating to intoxicating liquor, the commissioner or his agent shall immediately issue and order citing such person to appear before him on a day named, not more than thirty and not less than fifteen days from the date of

service upon such permittee of a copy of the citation, which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the commissioner with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearings shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless parties agree on another place. If it be found that such person has been guilty of wilfully violating any such laws, as charged, or has not in good faith conformed to the provisions of this act, such permit shall be revoked, and no permit shall be granted to such person within one year thereafter. Should the permit be revoked by the commissioner, the permittee may have a review of his decision before a court of equity in the manner provided in section 5 hereof. During the pendency of such action such permit shall be temporarily revoked.

Permanent Record Must Be Made of Sales, Etc.:—Sec. 10.

No person shall manufacture, purchase for sale, sell, or transport any liquor without making at the time a permanent record thereof showing in detail the amount and kind of liquor manufactured, purchased, sold, or transported, together with the names and addresses of the persons to whom sold, in case of sale, and the consignor and consignee in case of transportation, and the time and place of such manufacture, sale, or transportation. The commissioner may prescribe the form of such record, which shall at all times be open to inspection as in this act provided.

Wholesale Druggist Cannot Sell at Retail:—Sec. 11. All manufacturers and wholesale or retail druggists shall keep as a part of the records required of them a copy of all permits to purchase on which a sale is made, and no manufacturer or wholesale druggist shall sell or otherwise dispose of any liquor except at wholesale and only to persons having permits to purchase in such quantities.

Label Must Be Attached to Every Container:—Sec. 12. All persons manufacturing liquor for sale under the provisions of this title shall securely and permanently attach to every container thereof, as the same is manufactured, a label stating

the name of manufacturer, kind and quantity of liquor contained therein, and the date of its manufacture, together with the number of the permit authorizing the manufacture thereof; and all persons possessing such liquor in wholesale quantities shall securely keep and maintain such label thereon; and all persons selling at wholesale shall attach to every package of liquor, when sold, a label setting forth the kind and quantity of liquor contained therein, by whom manufactured, the date of sale, and the person to whom sold; which label shall likewise be kept and maintained thereon until the liquor is used for the purpose for which such sale was authorized.

Every Carrier Must Make Record of Shipment When Received:—Sec. 13. It shall be the duty of every carrier to make a record at the place of shipment of the receipt of any liquor transported, and he shall deliver liquor only to persons who present to the carrier a verified copy of a permit to purchase which shall be made a part of the carrier's permanent record at the office from which delivery is made.

The agent of the common carrier is hereby authorized to administer the oath of the consignee in verification of the copy of the permit presented, who, if not personally known to the agent, shall be identified before the delivery of the liquor to him. The name and the address of the person identifying the consignee shall be included in the record.

Shipper Must Notify Carrier of Nature of Shipment:—Sec. 14. It shall be unlawful for a person to use or induce any carrier, or any agent, or employe thereof, to carry or ship any package or receptacle containing liquor without notifying the carrier of the true nature and character of the shipment. No carrier shall transport nor shall any person receive liquor from a carrier unless there appears on the outside of the package containing such liquor the following information: Name and address of the consignor or seller, name and address of the consignee, kind and quantity of liquor contained therein, and number of the permit to purchase or ship the same, together with the name and address of the person using the permit.

Unlawful for Carrier to Accept Shipment Upon False Statement:—Sec. 15. It shall be unlawful for any consignee to accept or receive any package containing any liquor upon

which appears a statement known to him to be false, or for any carrier or other person to consign, ship, transport, or deliver any such package, knowing such statement to be false.

Order to Ship Must Be to an Actual Bona Fide Consignee:

—**Sec. 16.** It shall be unlawful to give any carrier or any officer, agent, or person acting or assuming to act for such carrier an order requiring the delivery to any person of any liquor or package containing liquor consigned to, or purporting or claimed to be consigned to a person, when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquor.

Unlawful to Advertise Sale, Etc.:—Sec. 17. It shall be unlawful to advertise anywhere, or by any means, or method, liquor, or the manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard containing such advertisement to remain upon one's premises. But nothing herein shall prohibit manufacturers and wholesale druggists holding permits to sell liquor from furnishing price lists, with description of liquor for sale, to persons permitted to purchase liquor, or from advertising alcohol in business publications or trade journals circulating generally among manufacturers of lawful alcoholic perfumes, toilet preparations, flavoring extracts, medicinal preparations, and like articles: Provided, however, that nothing in this act or in the act making appropriations for the Post Office Department, approved March 3, 1917 (Thirty-ninth Statutes at Large, Part I, page 1058, et seq.) shall apply to newspapers published in foreign countries when mailed to this country.

Unlawful to Advertise for Sale Utensil or Contrivance:—

Sec. 18. It shall be unlawful to advertise, manufacture, sell or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula, direction, or recipe advertised, designed, or intended for the use in the unlawful manufacture of intoxicating liquor.

No Person Shall Knowingly Receive Order from Any Person for Sale:—Sec. 19. No person shall solicit or receive, nor knowingly permit his employee to solicit or receive, from

any person any order for liquor or give any information of how liquor may be obtained in violation of this act.

Any Person Injured by Intoxicated Person Has Right of Damages:—Sec. 20. Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawfully selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication, and in any such action such person shall have the right to recover actual and exemplary damages. In case of the death of either party, the action or the right of action given by this section shall survive to or against his or her executor or administrator, and the amount so recovered by either wife or child shall be his or her sole and separate property. Such action may be brought in any court of competent jurisdiction. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other.

Place Where Liquor is Kept is Declared to be Common Nuisance:—Sec. 21. Any room, house, building, boat, vehicle, structure or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or be imprisoned for not more than one year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of liquor contrary to the provision of this title, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation, and any such lien may be enforced by action in any court having jurisdiction.

Action to Enjoin May be Brought in the Name of the United States.—Sec. 22. An action to enjoin any nuisance defined in this title may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting attorney of any state, or any subdivision thereof, or by the commissioner or his deputies or assistants. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation of this Act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquors shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than \$500 nor more than \$1,000, payable to the United States, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, kept, or otherwise disposed of therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violation of this title upon said property.

Any Intent to Sell Liquor May be Enjoined:—Sec. 23.

That any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company, or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, or leave in a place for another to secure, any liquor, or who shall travel to solicit, or solicit, or take, or accept orders for the sale, shipment, or delivery of liquor in violation of this title and is guilty of a nuisance and may be restrained by injunction, temporary and permanent, from doing or continuing to do any of said acts or things. In such proceedings it shall not be necessary to show any intention on the part of the accused to continue such violations if the action is brought within sixty days following any such violation of the law. For removing and selling property in enforcing this act the officers shall be entitled to charge and receive the same fee as the sheriff of the county would receive for levying upon and selling property under execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court. Any violation of this title upon any leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease.

A Violation of an Injunction May be Summarily Punished as Contempt:—Sec. 24. In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this title, the court, or in vacation, a judge thereof, may summarily try and punish the defendant. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which such injunction issued information under oath setting out the alleged facts constituting the violation, whereupon the court or judge shall forthwith cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment of not less than thirty days nor more than twelve months, or by both fine and imprisonment.

Violation to Have in Possession Anything to Aid in Manufacture:—Sec. 25. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law numbered 24 of the sixty-fifth congress, approved June 15, 1917, and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor, and all property designed for the unlawful manufacture of liquor, shall be destroyed, unless the court shall otherwise order. No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purposes such as a store, shop, saloon, restaurant, hotel, or boarding house. The term "private dwelling" shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process.

Officer May Take Vehicle Caught in Transporting Liquor:—Sec. 26. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting, in violation of the law, intoxicating liquors, in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties,

in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the treasury of the United States as miscellaneous receipts.

The Court May Deliver Unlawful Liquor to Any Department:—Sec. 27. In all cases in which intoxicating liquors may be subject to be destroyed under the provisions of this Act the court shall have jurisdiction upon the application of the United States attorney to order them delivered to any department or agency of the United States government for medicinal, mechanical, or scientific uses, or to order the same sold at private sale for such purposes to any person having a permit to purchase liquor to be covered into the treasury of the United

States to the credit of miscellaneous receipts, and all liquor heretofore seized in any suit or proceeding brought for violation may likewise be so disposed of, if not claimed within sixty days from the date this section takes effect.

All Officers Authorized to Enforce the Criminal Laws May Act:—Sec. 28. The commissioner, his assistants, agents and inspectors, and all other officers of the United States, whose duty it is to enforce criminal laws, shall have all the power and protection in the enforcement of this act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the law of the United States.

Punishment for Manufacturing, Etc.:—Sec. 29. Any person who manufactures or sells liquor in violation of this title shall for a first offense be fined not more than \$1,000, or imprisoned not exceeding six months, and for a second or subsequent offense shall be fined not less than \$200 nor more than \$2,000 and be imprisoned not less than one month nor more than five years.

Any person violating the provisions of any permit, or who makes any false record, report, or affidavit required by this title, or violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for a first offense not more than \$500; for a second offense not less than \$100 nor more than \$1,000, or be imprisoned not more than ninety days; for any subsequent offense he shall be fined not less than \$500 and be imprisoned not less than three months nor more than two years. It shall be the duty of the prosecuting officer to ascertain whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment. The penalties provided in this act against the manufacture of liquor without a permit shall not apply to a person for manufacturing non-intoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not be sold or delivered except to persons having permits to manufacture vinegar.

No Person Can Excuse Himself on Ground That it Will Incriminate:—Sec. 30. No person shall be excused, on the ground that it may tend to incriminate him or subject him to a

penalty or forfeiture, from attending and testifying or producing books, papers, documents, and other evidence in obedience to a subpoena of any court in any suit or proceeding based upon or growing out of any alleged violation of this act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, but no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Delivery by Common Carrier—Jurisdiction at Point Delivered to Consignee:—Sec. 31. In case of a sale of liquor where the delivery thereof was made by a common or other carrier the sale and delivery shall be deemed to be made in the county or district wherein the delivery was made by such carrier to the consignee, his agent or employee, or in the county or district wherein the sale was made, or from which the shipment was made and prosecution for such sale or delivery may be had in any such county or district.

Several Counts May be Joined and Conviction for All Had:—Sec. 32. In any affidavit, information, or indictment for the violation of this act, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so.

After Feb. 1, 1920, Possession Prima Facie Evidence is Kept for Sale:—Sec. 33. After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to the

commissioner within ten days after the date when the Eighteenth Amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be lawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed and used.

All Reports Required to be filed are Subject to Inspection:—Sec. 34. All records and reports kept or filed under the provisions of this act shall be subject to inspection at any reasonable hour by the commissioner or any of his agents or by any public prosecutor or by any person designated by him, or by any peace officer in the state where the record is kept, and copies of such records and reports duly certified by the person with whom kept or filed may be introduced in evidence with like effect as the original thereof, and verified copies of such records shall be furnished to the commissioner when called for.

All Laws Inconsistent with This Act Are Repealed:—Sec. 35. All provisions of law that are inconsistent with this act are repealed only to the extent of such inconsistency and the regulations herein provided for the manufacture or traffic in intoxicating liquor shall be construed as in addition to existing laws. This act shall not relieve any one from paying any taxes or other charges imposed upon the manufacture or traffic in such liquor. No liquor revenue stamps or tax receipts for any illegal manufacture or sale shall be issued in advance, but upon evidence of such illegal manufacture or sale a tax shall be assessed against, and collected from, the person responsible for such illegal manufacture or sale in double the amount now provided by law, with an additional penalty of \$500 on retail dealers and \$1,000 on manufacturers. The payment of such tax or penalty shall give no right to engage in the manufacture or sale of such liquor, or relieve anyone from

criminal liability nor shall this act relieve any person from any liability, civil or criminal, heretofore or hereafter incurred under existing laws.

The commissioner, with the approval of the secretary of the treasury, may compromise any civil cause arising under this title before bringing action in court; and with the approval of the attorney general he may compromise any such cause after action thereon has been commenced.

Any Provision of This Act Invalid Does Not Affect Others:—Sec. 36. If any provision of this act shall be held invalid it shall not be construed to invalidate other provisions of the act.

Liquor May Be Stored in Bonded Warehouses:—Sec. 37. Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this act, or prevent the transportation of such liquor to such warehouses or to any wholesale druggist for sale to such druggist for purposes not prohibited when the tax is paid, and permits may be issued therefor.

A manufacturer of any beverage containing less than one-half of 1 per centum of alcohol by volume may, on making application and giving such bond as the commissioner shall prescribe, be given a permit to develop in the manufacture thereof by the usual methods of fermentation and fortification or otherwise a liquid such as beer, ale, porter, or wine, containing more than one-half of 1 per centum of alcohol by volume, but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic contents thereof shall under such rules and regulations as the commissioner may prescribe be reduced below such one-half of 1 per centum of alcohol: Provided, that such liquid may be removed and transported, under bond and under such regulations as the commissioner may prescribe from one bonded plant or warehouse to another for the purpose of having the alcohol extracted therefrom. And such liquids may be developed, under permit, by persons other than the manufacturers of beverages, containing less than one-half of 1 per centum of alcohol by volume, and sold to such manufacturers for conversion into such beverages. The alcohol removed from such liquid,

if evaporated and not condensed and saved, shall not be subject to tax; if saved it shall be subject to the same law as other alcoholic liquors. Credit shall be allowed on the tax due on any alcohol so saved to the amount of any tax paid upon the distilled spirits or brandy used in the fortification of the liquor from which the same is saved. When fortified wines are made and used for the production of nonbeverage alcohol, and dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume, no tax shall be assessed on the spirits used in such fortification, and such dealcoholized wines produced under the provisions of this act, whether carbonated or sparkling wines, but shall be subject to the tax on still wines only.

In any case where the manufacturer is charged with the manufacturing or selling for beverage purposes any malt, vinous, or fermented liquids containing one-half of 1 per centum or more of alcohol by volume, or in any case where the manufacturer, having been permitted by the commissioner to develop a liquid such as ale, beer, porter, or wine, containing more than one-half of 1 per centum of alcohol by volume in the manner and for the purpose herein provided, is charged with failure to reduce the alcoholic content of any such liquid below such one-half of 1 per centum before withdrawing the same from the factory, then in either such case the burden of proof shall be on such manufacturer to show that such liquid so manufactured, sold, or withdrawn contains less than one-half of 1 per centum of alcohol by volume. In any suit or proceeding involving the alcoholic content of any beverage, the reasonable expense of analysis of such beverage shall be taxed as costs in the case.

The Commissioner of Internal Revenue and Attorney General May Employ Assistants:—Sec. 38. The commissioner of internal revenue and the attorney general of the United States are hereby respectively authorized to appoint and employ such assistants, experts, clerks, and other employees in the District of Columbia or elsewhere, and to purchase such supplies and equipment as they may deem necessary for the enforcement of the provisions of this act, but such assistants, experts, clerks, and other employees, except such executive officers as may be appointed by the commissioner or the

attorney general to have immediate direction of the enforcement of the provisions of this act, and persons authorized to issue permits, and agents and inspectors in the field service, shall be appointed under the rules and regulations prescribed by the Civil Service Act: Provided, that the commissioner and attorney general in making such appointments shall give preference to those who have served in the military or naval service in the recent war, if otherwise qualified, and there is hereby authorized to be appropriated, out of any money in the treasury, not otherwise appropriated, such sum as may be required for the enforcement of this act including personal services in the District of Columbia, and for the fiscal year ending June 30, 1920, there is hereby appropriated, out of any money in the treasury, not otherwise appropriated, the sum of \$2,000,000 for the use of the commissioner of internal revenue and \$100,000 for the use of the department of justice for the enforcement of the provisions of this act, including personal services in the District of Columbia and necessary printing and binding.

Where Property Is Proceeded Against Summons Must Be Served on Accused:—Sec. 39. In all cases wherein the property of any citizen is proceeded against or wherein a judgment affecting it might be rendered, and the citizen is not the one who in person violated the provisions of the law, summons must be issued in due form and served personally, if said person is to be found within the jurisdiction of the court.

TITLE III.

Alcohol Defined:—Sec. 1 When used in this title the term "alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or whatever processes produced. The term "container" includes any receptacle, vessel, or form of package, tank, or conduit used or capable of use for holding, storing, transferring, or shipment of alcohol.

When to Apply for Permit:—Sec. 2. Any person now producing alcohol shall, within thirty days after the passage of this Act, make application to the commissioner for registration of his industrial alcohol plant, and as soon thereafter as

practicable the premises shall be bonded and permit may issue for the operation of such plant, and any person hereafter establishing a plant for the production of alcohol shall likewise before operation make application, file bond, and receive permit.

How Warehouses may be Established for Storage of Alcohol:—Sec. 3. Warehouses for the storage and distribution of alcohol to be used exclusively for other than beverage purposes may be established upon filing of application and bond, and issuance of permit at such places, either in connection with the manufacturing plant or elsewhere, as the commissioner may determine; and the entry and storage of alcohol therein, and the withdrawal of alcohol therefrom shall be made in such containers and by such means as the commissioner by regulation may prescribe.

Regulations for Transferring Alcohol:—Sec. 4. Alcohol produced at any registered industrial alcohol plant or stored in any bonded warehouse may be transferred under regulations to any other registered industrial alcohol plant or bonded warehouse for any lawful purpose.

Tax as Lien upon Alcohol:—Sec. 5. Any tax imposed by law upon alcohol shall attach to such alcohol as soon as it is in existence as such, and all proprietors of industrial alcohol plants and bonded warehouses shall be jointly and severally liable for any and all taxes on any and all alcohol produced thereat or stored therein. Such taxes shall be a first lien on such alcohol and the premises and plant in which such alcohol is produced or stored, together with all improvements and appurtenances thereunto belonging or in any wise appertaining.

Provisions for Disposition of Distilled Liquors in Bonded Warehouse at Time of Enactment:—Sec. 6. Any distilled spirits produced and fit for beverage purposes remaining in any bonded warehouse on or before the date when the eighteenth amendment of the constitution of the United States goes into effect may, under regulations, be withdrawn therefrom either for denaturation at any bonded denaturing plant or for deposit in a bonded warehouse established under this act; and when so withdrawn, if not suitable as to proof, purity, or quality for other than beverage purposes, such distilled

spirits shall be redistilled, purified, and changed in proof so as to render such spirits suitable for other purposes, and having been so treated may thereafter be denatured or sold in accordance with the provisions of this act.

Permit to Operate Existing Distillery:—Sec. 7. Any distillery or bonded warehouse heretofore legally established may, upon filing application and bond and the granting of permit, be operated as an industrial alcohol plant or bonded warehouse under the provisions of this title and regulations made there under.

Alcohol May Be Manufactured:—Sec. 8. Alcohol may be produced at any industrial alcohol plant established under the provisions of this title, from any raw materials or by any processes suitable for the production of alcohol, and, under regulations, may be used at any industrial alcohol plant or bonded warehouse or sold or disposed of for any lawful purpose, as in this act provided.

Exempt from Certain Laws:—Sec. 9. Industrial alcohol plants and bonded warehouses established under the provisions of this title shall be exempt from the provisions of sections 3154, 3244, 3258, 3259, 3260, 3263, 3264, 3266, 3267, 3268, 3269, 3271, 3273, 3274, 3275, 3279, 3280, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3302, 3303, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, and 3327 of the Revised Statutes, sections 48 to 60, inclusive, and sections 62 and 67 of the act of August 27, 1894 (Twenty-eighth Statutes, pages 563 to 568) and from such other provisions of existing laws relating to distilleries and bonded warehouses as may, by regulations, be declared inapplicable to industrial alcohol plants and bonded warehouses established under this act. Regulations may be made embodying any provisions of the sections above enumerated.

Establishment of Denaturing Plants:—Sec. 10. Upon the filing of application and bond and issuance of permit denaturing plants may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage.

Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export.

Nothing in this act shall be construed to require manufacturers of distilled vinegar to raise the proof of any alcohol used in such manufacture or to denature the same.

Alcohol May Be Withdrawn—Tax Free:—Sec. 11. Alcohol produced at any industrial alcohol plant or stored in any bonded warehouse may, under regulations, be withdrawn tax free as provided by existing law from such plant or warehouse for transfer to any denaturing plant for denaturation, or may, under regulations, before or after denaturation, be removed from any such plant or warehouse for any lawful tax-free purpose.

Spirits of less proof than one hundred and sixty degrees may, under regulations, be deemed to be alcohol for the purpose of denaturation, under the provisions of this title.

Alcohol may be withdrawn, under regulations, from any industrial plant or bonded warehouse tax free by the United States or any governmental agency thereof, or by the several states and territories or any municipal subdivision thereof or by the District of Columbia, or for the use of any scientific university or college of learning, any laboratory for use exclusively in scientific research, or for use in any hospital or sanatorium.

But any person permitted to obtain alcohol tax free, except the United States and the several states and territories and subdivision thereof, and the District of Columbia, shall first apply for and secure a permit to purchase the same and give the bonds prescribed under Title II of this act, but alcohol withdrawn for nonbeverage purposes for use of the United States and the several states, territories and subdivisions thereof, and the District of Columbia may be purchased and withdrawn subject only to such regulations as may be prescribed.

General Provisions, United States Prohibition Act:—
Sec. 12. The penalties provided in this title shall be in addition to any penalties provided in Title II of this act, unless expressly otherwise therein provided.

Regulations, Etc., to Be Prescribed:—Sec. 13. The commissioner shall from time to time issue regulations respecting the establishment, bonding, and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export and use of alcohol, which may be necessary, advisable, or proper to secure the revenue, to prevent diversion of the alcohol to illegal uses, and to place the non-beverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purpose, upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products.

Allowance for Evaporation:—Sec. 14. Whenever any alcohol is lost by evaporation or other shrinkage, leakage, casualty, or unavoidable cause during distillation, redistillation, denaturation, withdrawal, piping, shipment, warehousing, storage, packing, transfer, or recovery, of any such alcohol the commissioner may remit or refund any tax incurred under existing law upon alcohol, provided he is satisfied that the alcohol has not been diverted to any illegal use: Provided, also, that such allowance shall not be granted if the person claiming same is indemnified against such loss by a valid claim of insurance.

Penalties Under This Title:—Sec. 15. Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this title and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this title or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding \$1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than \$100 nor more than \$10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the

manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation.

Collection of Tax to Be by Assessment or by Stamp:—

Sec. 16. Any tax payable upon alcohol under existing law may be collected either by assessment or by stamp as regulations shall provide; and if by stamp, regulations shall issue prescribing the kind of stamp to be used and the manner of affixing and canceling the same.

Release of Property Seized for Violation:—Sec. 17. When any property is seized for violation of this title it may be released to the claimant or to any intervening party, in the discretion of the commissioner, on a bond given and approved.

All Administrative Provisions of Revenue Laws Applicable:—Sec. 18. All administrative provisions of internal revenue law, including those relating to assessment, collection, abatement, and refund of taxes and penalties, and the seizure and forfeiture of property, are made applicable to this title in so far as they are not inconsistent with the provisions thereof.

Repeal of Inconsistent Laws:—Sec. 19. All prior statutes relating to alcohol as defined in this title are hereby repealed in so far as they are inconsistent with the provisions of this title.

As Affecting Canal Zone:—Sec. 20. It shall be unlawful to import or introduce into the Canal Zone, or to manufacture, sell, give away, dispose of, transport, or have in one's possession or under one's control within the Canal Zone, any alcoholic, fermented, brewed, distilled, vinous, malt or spirituous liquors, except for sacramental, scientific, pharmaceutical, industrial, or medicinal purposes, under regulations to be made by the President, and any such liquors within the Canal Zone in violation hereof shall be forfeited to the United States and seized: Provided, that this section shall not apply to liquor in transit through the Panama Canal or on the Panama Railroad.

Each and every violation of any of the provisions of this section shall be punished by a fine of not more than \$1,000 or imprisonment not exceeding six months for a first offense, and

by a fine not less than \$200 nor more than \$2,000 and imprisonment not less than one month nor more than five years for a second or subsequent offense.

All offenses heretofore committed within the Canal Zone may be prosecuted and all penalties therefor enforced in the same manner and to the same extent as if this act had not been passed.

When Act Becomes Effective:—Sec. 21. Titles I and III and sections 1, 27, 37 and 38 of Title II of this act shall take effect and be in force from and after the passage and approval of the act. The other sections of Title II shall take effect and be in force from and after the date when the eighteenth amendment of the constitution of the United States goes into effect.

AN ACT SUPPLEMENTAL TO THE NATIONAL PROHIBITION ACT.

Terms Defined:—Sec. 1. That the words “person,” “commissioner,” “application,” “permit,” “regulation,” and “liquor,” and the phrase “intoxicating liquor,” when used in this Act, shall have the same meaning as they have in Title II of the National Prohibition Act.

Limitation fixed on prescriptions:—Sec. 2. That only spiritous and vinous liquor may be prescribed for medicinal purposes, and all permits to prescribe and prescriptions for any other liquor shall be void. No physician shall prescribe, nor shall any person sell or furnish on any prescription, any vinous liquor that contains more than 24 per centum of alcohol by volume, nor shall anyone prescribe or sell or furnish on any prescription more than one-fourth of one gallon of vinous liquor, or any such vinous or spirituous liquor that contains separately or in the aggregate more than one-half pint of alcohol, for use by any person within any period of ten days. No physician shall be furnished with more than one hundred prescription blanks for use in any period of ninety days, nor shall any physician issue more than that number of prescriptions within any such period unless on application therefor he shall make it clearly apparent to the commissioner that for some extraordinary reason a larger amount is necessary, whereupon the necessary additional blanks may be furnished him.

But this provision shall not be construed to limit the sale of any article the manufacture of which is authorized under section 4, Title II, of the National Prohibition Act.

If the commissioner shall find after hearing, upon notice as required in section 5 of Title II of the National Prohibition Act, that any article enumerated in subdivisions b, c, d, or e of section 4 of Title II of said National Prohibition Act is being used as a beverage, or for intoxicating beverage purposes, he may require a change of formula of such article and in the event that such change is not made within a time to be named by the commissioner he may cancel the permit for the manufacture of such article unless it is made clearly to appear to the commissioner that such use can only occur in rare or exceptional instances, but such action of the commissioner may by appropriate proceedings in a court of equity be reviewed, as provided for in section 5, Title II, of said National Prohibition Act: Provided, that no change of formula shall be required and no permit to manufacture any article under subdivision (E), section 4, Title II, of the National Prohibition Act shall be revoked unless the sale or use of such article is substantially increased in the community by reason of its use as a beverage or for intoxicating beverage purposes.

No spirituous liquor shall be imported into the United States, nor shall any permit be granted authorizing the manufacture of any spirituous liquor, save alcohol, until the amount of such liquor now in distilleries or other bonded warehouses shall have been reduced to a quantity that in the opinion of the commissioner will, with liquor that may thereafter be manufactured and imported, be sufficient to supply the current need thereafter for all nonbeverage uses: Provided, that no vinous liquor shall be imported into the United States unless it is made to appear to the commissioner that vinous liquor for such nonbeverage use produced in the United States is not sufficient to meet such nonbeverage needs: Provided, further, that this provision against importation shall not apply to shipments en route to the United States at the time of the passage of this act: And provided, further, that the commissioner may authorize the return to the United States under such regulations and conditions as he may prescribe any distilled spirits of American production exported free of tax and reimported

in original packages in which exported and consigned for redeposit in the distillery bonded warehouse from which originally removed.

Territory Covered by Act:—Sec. 3. That this act and the National Prohibition Act shall apply not only to the United States but to all territory subject to its jurisdiction, including the territory of Hawaii and the Virgin islands; and jurisdiction is conferred on the courts of the territory of Hawaii and the Virgin islands to enforce this act and the National Prohibition Act in such territory and islands.

Regulations Made by Commissioner:—Sec. 4. That regulations may be made by the commissioner to carry into effect the provisions of this act. Any person who violates any of the provisions of this act shall be subject to the penalties provided for in the National Prohibition Act.

Laws in Existence at Time of Enactment Not Affected if Not in Conflict:—Sec. 5. That all laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the National Prohibition Act was enacted, shall be and continue in force, as to both beverage and nonbeverage liquor, except such provisions of such laws as are directly in conflict with any provisions of the National Prohibition Act or of this act; but if any act is a violation of any of such laws and also of the National Prohibition Act or of this act, a conviction for such act or offense under one shall be a bar to prosecution therefor under the other. All taxes and tax penalties provided for in section 35 of Title II of the National Prohibition Act shall be assessed and collected in the same manner and by the same procedure as other taxes on the manufacture of or traffic in liquor.

If distilled spirits upon which the internal revenue tax has not been paid are lost by theft, accidental fire, or other casualty while in possession of a common carrier subject to the Transportation Act of 1920 or the Merchant Marine Act, 1920, or if lost by theft from a distillery or other bonded warehouse, and it shall be made to appear to the commissioner that such losses did not occur as the result of negligence, connivance, collusion, or fraud on the part of the owner or person

legally accountable for such distilled spirits, no tax shall be assessed or collected upon the distilled spirits so lost, nor shall any tax penalty be imposed or collected by reason of such loss, but the exemption from the tax and penalty shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such loss. This provision shall apply to any claim for taxes or tax penalties that may have accrued since the passage of the National Prohibition Act or that may accrue hereafter. Nothing in this section shall be construed as in any manner limiting or restricting the provisions of Title III of the National Prohibition Act.

Penalty for Search of Private Dwelling:—Sec. 6. That any officer, agent, or employee of the United States engaged in the enforcement of this act, or the National Prohibition Act, or any other law of the United States, who shall search any private dwelling as defined in the National Prohibition Act, and occupied as such dwelling, without a warrant directing such search, or who while so engaged shall without a search warrant maliciously and without reasonable cause search any other building or property, shall be guilty of a misdemeanor and upon conviction thereof shall be fined for a first offense not more than \$1,000, and for a subsequent offense not more than \$1,000 or imprisoned not more than one year, or both such fine and imprisonment.

Whoever not being an officer, agent, or employee of the United States shall falsely represent himself to be such officer, agent, or employee and in such assumed character shall arrest or detain any person, or shall in any manner search the person, buildings, or other property of any person, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000, or imprisoned for not more than one year, or by both such fine and imprisonment. (Act of Nov. 23, 1921.)

CONSTITUTION OF THE UNITED STATES.

PREAMBLE. We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

1, All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

2. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of 25 years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every 30,000, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight, Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight, Delaware, one;

Maryland, six, Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three. (Amended, see fourteenth and sixteenth amendments).

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote. (Superseded by the seventeenth amendment.)

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; (and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.) Clause enclosed in brackets was superseded by the seventeenth amendment.)

No person shall be a senator who shall not have attained to the age of 30 years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate; but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro tempore in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be

convicted without the concurrence of two-thirds of the members present.

Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

4. The times, places and manner of holding election for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

5. Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from

the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

7. All bills for raising a revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Every bill, which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within 10, days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevents its return; in which case, it shall not be a law.

Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on the question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

8. The congress shall have power—

To lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcy throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to

exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince or foreign state.

10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

1. The executive power shall be vested in a President of the United State of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then from the five highest on the list the said

House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President. (The foregoing paragraph was superseded by the twelfth amendment.)

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of 35 years, and been 14 years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the congress may, by law, provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Before he enters on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons, for offenses against the United States except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers, as they shall think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

3. He shall, from time to time, give to the congress information of the state of the Union; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all officers of the United States.

4. The President, Vice-President, and all civil officers of the United States, shall be removed from office, on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases, affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state or the citizens thereof, and foreign states, citizens or subjects.

In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

1. Full faith and credit shall be given, in each state, to the public acts, records and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

3. New states may be admitted by the congress of this Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the injunction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property, belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against, domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amend-

ments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: **Provided**, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

**ARTICLES IN ADDITION TO, AND AMENDMENT OF,
THE CONSTITUTION OF THE UNITED STATES OF
AMERICA PROPOSED BY CONGRESS, AND RATI-
FIED BY THE LEGISLATURE OF THE SEVERAL
STATES PURSUANT TO THE FIFTH ARTICLE OF
THE ORIGINAL CONSTITUTION.**

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the rights of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same

offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed \$20, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

1. The electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers

on the list the Senate shall choose a Vice-President. A quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several states, according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state being 21 years of age, and citizens of the United States or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such state.

3. No person shall be a senator or representative in congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color or previous condition of servitude.

2. The congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI.

The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

ARTICLE XVII.

The Senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in

each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: **Provided**, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it became valid as part of the constitution.

ARTICLE XVIII.

1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

2. The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of the several states, as provided in the constitution, within seven years from the date of the submission hereof to the states by the congress.

ARTICLE XIX.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

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